

C.C. 253/2011      2011. T      NO. 41

**IN THE HIGH COURT OF SIERRA LEONE**  
**(GENERAL CIVIL DIVISION)**

BETWEEN: -

**DAVID TAYLOR**  
MEMBER OF MOTOR DRIVERS & GENERAL  
TRANSPORT WORKERS UNION  
99C, LOOKING TOWN, KISSY

**IBRAHIM SESAY**      - PLAINTIFFS/RESPONDENTS  
MEMBER OF MOTOR DRIVER & GENERAL  
TRANSPORT WORKES UNION

AND  
THE INTERIM COMMITTEE OF  
THE MOTOR DRIVERS & GENERAL  
TRANSPORT WORKERS UNION

<b>MR. M.B. WILLIAMS</b>	- CHAIRMAN
<b>MR. SIDIE M. SESAY</b>	-SECRETARY
<b>MR. M. S. CONTEH</b>	-SECRETARY
<b>MR. J. A. MAHOI</b>	-MEMBER
<b>MR. A. R. MUSA</b>	-MEMBER
<b>MR. E.B. KAMARA</b>	-MEMBER
<b>MR. A.R. KAMARA</b>	-MEMBER-1 <sup>ST</sup> DEFENDANT/ APPLICANT

<b>PRESIDENT</b>	-2 <sup>ND</sup> DEFENDANT/APPLICANT
<b>ALHAJI A. FOFANAH</b>	DEFENDANT/APPLICANT
<b>VICE PRESIDENT</b>	--3 <sup>RD</sup> DEFENDANT/APPLICANT
<b>DAVID CONTEH</b>	
<b>SECRETARY-GENL</b>	4 <sup>TH</sup> DEFENDANT/APPLICANT
<b>SHEIKH IMAM K. KAMARA</b>	
<b>DEPUTY SECRETARY-GENL</b>	-5 <sup>TH</sup> DEFENDANT/APPLICANT
<b>ABDUL WONDANGA</b>	
<b>TREASURER</b>	-6 <sup>TH</sup> DEFENDANT
<b>ALPHA BAH</b>	APPLICANT

**E.E C. Shears-Moses Esq. for Defendants/Applicants**  
**L. Jenkins-Johnston Esq. for Plaintiffs/Respondents**

**RULING DELIVERED THE 14<sup>th</sup> DAY OF June, 2012**

The Defendants/Applicants in this matter have filed a Notice of Motion dated 13<sup>th</sup> April 2012 in which they are seeking an Order

to set aside the Order of this court dated 30<sup>th</sup> March, 2012 for irregularity on the following grounds:

- i. That the Notice of Motion dated 28<sup>th</sup> March 2012 filed on behalf of the ~~of the~~ Plaintiffs/Applicants therein did not comply with Order 8 rule 2 (2) of the High Court Rules 2007, to wit, unless the court gives leave to the contrary, there shall be at least two clear days between the service of notice of a notice of a motion and the day named in the motion for hearing.
- ii. That the Order of Court goes outside what was before the court, to wit, Order 2 of the Order of 30<sup>th</sup> March 2012 is outside Order 2 of the Consent Judgment dated 16<sup>th</sup> February 2012.

In support of the application is the affidavit of E. E. C. Shears Moses Esq. Solicitor sworn to on 13<sup>th</sup> April 2012. He deposed that the Notice of Motion dated 28<sup>th</sup> March 2012 was served on solicitors for the Defendants/Respondents therein on the said 28<sup>th</sup> March 2012 and was scheduled for hearing on 30<sup>th</sup> March 2012. He deposed that there was no application for leave to move the court before the prescribed time and the application was heard on 30<sup>th</sup> March 2012 in the absence of counsel for the Defendants/Applicants and the Defendants/Applicants and an Order obtained - EECSM2.

The deponent went on to depose that the second relief granted in the said Order is contrary to the Constitution of the Union as stated in Article 7 thereof and is not part of the Consent Judgment. A copy of the Constitution is exhibited as Exh. EECSM3. He further averred that he is informed by the President of the said Union that certain members of the said Union want to use the court as an avenue to subvert the Union's Constitution. Furthermore he referred to Article 8 of the said Constitution which he stated is quite clear and opined that no order of the court should be used to flout its said provision.

Counsel for the Defendants/Applicant submitted that the application was heard prematurely and in the absence of the Respondents therein and their solicitors thus rendering the proceedings irregular and ought to be nullified. He went on to refer to the Order of Court obtained and submitted that the said order is irregular as the Central Executive Council of the Union as listed and purported to be recognised in the said Order is not in accordance with Article 7 of the Constitution of the said Union and not part of the Consent Judgment. He contended that looking at the composition of the Central Executive Council as set out in Article 7(b) of the Union's Constitution shows that it is the same as the National Executive Council with the exception of the four members representing the regions.

He maintained that there is no provision for two Presidents two Secretaries and so on as that would create chaos and that that is the composition which the Plaintiffs got the court to recognise .. He stressed that the names of the members of both the National Executive and the Central Executive Council should be the same with the exception of the four members representing the regions. He submitted that this is not the case and therefore urged the court to set aside the said Order as prayed.

The Plaintiffs/Respondents opposed the application and filed an affidavit in opposition sworn to on 28<sup>th</sup> April 2012 by **IBRAHIM SESAY**, Acting President of the Union. He deposed that Articles 7 and 8 of the Constitution have been duly followed and that the application of 30<sup>th</sup> March 2012 complied with the Consent Judgment. He further stated that the fully constituted National Executive of the Union took certain decisions which were legal and binding and minutes of the several meetings of the National Executive Council held in March 2012 were exhibited to the said affidavit in opposition as Exh A -D. Also exhibited was a letter dated 19<sup>th</sup> March 2012 from the National Executive Council addressed to the Chairman Interim Committee forwarding a list of members of the Central Executive Council Exh F2-4.



Another letter addressed to the Master and Registrar, High Court dated 27<sup>th</sup> March 2012 also forwarded the same list of members of the Central Executive Council – Exh G.

Counsel for the Plaintiffs/Respondents explained that there was a difference in the names of members of the Central Executive Council because at the meeting of the National Executive Council held on 19<sup>th</sup> March 2012 it was decided to suspend the 5 man Interim Committee that had been running the Union and replace them by members in acting capacities. The names of these members who have replaced substantive members are therefore now reflected in the list. He further submitted that the National Executive Council could properly do this as they had the requisite quorum of two-third members present at the meeting. He submitted that the Order was therefore not irregular.

With respect the issue of hearing the application prematurely, counsel for the Plaintiff/Respondents submitted that the Defendants/Applicants were duly served and that he had proceeded to move the court as he did not believe the issue would be contentious. He prayed the court to invoke the provisions of Order 2 rule 1 for any irregularity in the proceedings to be waived.

Let me state first of all that with regard the submission that sufficient notice was not given the Defendants before the application was made, counsel for the Plaintiff has conceded but urged the court to invoke the provisions of Order 2 rule 1 of the High Court Rules 2007. The issue to be considered is whether the non-compliance is fatal to the proceedings. Counsel for the Defendants must think it is fatal since he has applied for the Order obtained on that hearing to be set aside.

Before arriving at a conclusion in respect of that issue, I believe it is necessary to consider the other arm of the application which is that the Order goes outside the Consent Judgment of the parties entered herein. The relevant portion of the said Consent Judgment is as follows:

“2. That the interim committee is required to return to the courts within 21 days after this Order:

- a) A democratically elected National Executive Council sworn in by the Interim Committee (Article 6<sup>A</sup>) of the Union Constitution.
- b) A Central Executive Council of Motor Drivers and General Transport Workers Union established in accordance with Article 7 of the Union Constitution.”

/7

Counsel for the Defendants objection to the composition of the members of the Central Executive Council is that it does not conform with Article 7 of the Union Constitution. He submitted that the Central Executive Council consists of the same members as the National Executive Council with the exception of the four members representing the regions, but that the list of members presented to the court consists of different members from those of the National Executive Council. That seems to me the bone of contention.

Article 6A of the Union Constitution sets out the composition of the National Executive Council as follows

- “(i) President
- (ii) Vice President
- (iii) Secretary General
- (iv) Deputy Secretary General
- (v) Treasurer
- (vi) Organising Secretary
- (vii) 2 Auditors
- (viii) 2 Trustees
- (ix) Representatives from four regions (3 representative each)
- (~~x~~) 4 Ex-officio members”

Article 7 provides as follows:

- a) For the general administration and management of the Union's business, there shall be established a Central Executive <sup>Council</sup> ~~Union~~ which shall be charged with the supreme authority to carry on behalf of the National Executive Council all policies and working programmes with full mandate to supervise the day to day operational activities of the organisation.
  
- b) Composition of the Central Executive Council shall be:
  - (i) President
  - (ii) Vice President
  - (iii) Secretary General
  - (iv) Deputy Secretary General
  - (v) Treasurer
  - (vi) Auditors and Trustees
  - (vii) 4 Ex-officio Members"

In the list of members of the Central Executive Council presented to the court for recognition in compliance with the Consent Judgment the names of the officers are different from those in the National Executive Council.



Counsel for the Defendants/Applicants contention is that list flouts the provisions of Article 7 of the Union Constitution as the names of the officers should be the same in both Councils. I agree with counsel's submission that there can only be one President for example serving in that capacity in the National Executive Council and also in that capacity in the Central Executive Council.

However, having said that, counsel for the Plaintiff/Respondents has offered an explanation for the names appearing in the Central Executive Council being different from those in the National Executive Council. He has referred the court to a decision taken at a meeting of the National Executive Council on 19<sup>th</sup> March 2012. The decision taken by that body was to suspend the members of the 5 man Interim Committee pending investigation into their activities in running the Union. The minutes of that meeting are in evidence before the court.

I regret to say that the said decision made by the National Executive Council and the reason for the change in the names of the Central Executive Council were not brought to the knowledge of the court when the Order of 30<sup>th</sup> March 2012 was obtained.

/10

It is now clear that the list as presented to the court flouted Article 7 of the Union's Constitution. The names of the President and the other members of the National Executive Council ought to remain the same as those members serving in the same capacity in the Central Executive Council. Their names therefore should remain in the list of members of the Central Executive Council in accordance with Article 7 of the said Constitution and in compliance with the Consent Judgment.

Counsel for the Plaintiffs has urged that the resolution made by the National Executive Council was properly made and in place. There has been no contention by the Defendants that it was improper. It is therefore left entirely with the National Executive Council to inform the relevant authorities of their decision/resolution.

In view of all the above, I shall grant the application and set aside the Order of Court dated 30<sup>th</sup> March 2012. The Plaintiffs/Applicants to bear the costs of the application

*A. Showers*  
SIGNED: - A. SHOWERS 14 / 6 / 2012  
JUSTICE OF COURT OF APPEAL