

MISC. APP 186/12

2012

J.

NO.11

IN THE HIGH COURT OF SIERRA LEONE(FAMILY PROBATE AND DIVORCE DIVISION)IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION  
10 OF THE DOMESTIC VIOLENCE ACT 2007IN THE MATTER OF AN APPLICATION FOR PROTECTION  
ORDER FOR MRS UMU JALLOH

BETWEEN:

MADAM UMU JALLOH

-

APPLICANT

AND

ABDUL AND KARIM JALLOH

-

RESPONDENT

Counsel:

MR. V. S. NABIE Esq. for the Applicant

MR. E. E. C. SHEARS-MOSES Esq. for the Respondent

RULING DELIVERED THIS 2<sup>nd</sup> DAY OF October 2012  
 BY HONOURABLE MRS JUSTICE V. M. SOLOMON J. A.

RULING

The Applicant has commenced this matter by Summons seeking orders inter alia, pursuant to the Domestic Violence Act, Act No. 20 of 2007 (hereinafter called "The Act"). The Orders sought to wit:-

1. That this Honourable court make a Protection Order to prohibit the Respondent from depriving the Applicant of Access to food, shelter and other necessity of life pursuant to Section 13 (2) © of the Domestic Violence Act (No. 20) 2007.
2. That the Honourable Court makes a provision temporarily directing the Respondent to make periodic

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payments in respect of the maintenance of the Applicant as the Respondent is legally liable to support the Applicant as an emergency measure in the absence of any Order for Payment.

3. That the Honourable Court grants an Order directing the Respondent to pay a monthly sum of Le1,500,000,00 (One Million Five Hundred Thousand Leones) to the Applicant for maintenance.
4. Any other Order(s) as this Honourable Court may deem fit and just.
5. The costs of this Application be borne by the Respondent.

The application is supported by the affidavit of the Applicant. The Respondent entered an appearance by Musa & Forna Solicitors dated 22<sup>nd</sup> June 2012.

Upon commencement of his application, Mr. E.E.C. Shears-Moses, counsel for the Respondent took a preliminary objection to the application herein.

Mr. Shears Moses objected to the hearing of the application in that the summons is not in its appropriate form as provided by Order 7 Rule 2 (1) of the High Court Rules 2007 (hereinafter called "the Rules"). He submitted that an Originating Summons commences an action. He referred to Order 7 Rule 2(2) of the Rules in which the word "shall" was used which makes the provision mandatory. Counsel submitted that the parties are to be called Plaintiff and Defendant and not Applicant and Respondent as in this case. He also referred to Order 7 Rule 3 (1) of the Rules which provides that actions commenced by originating summons are to raise questions and the issues to be



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determined. In the instant case that was not done. He further referred to Order 7 Rule 4 and Order 6 Rule 9 of the Rules which said provisions apply to writs of summons and originating summons. He contended further that the summons was not sealed as required by Order 6 Rule 7 of the Rules. He finally submitted that the application before the Court is not an Originating Summons as it does not comply with provisions in the Rules and so should be set aside for irregularity. Mr. Nabie on the other hand relied on Orders 2 Rule 1 and Order 5 Rule 3(1) of the Rules. He submitted that the irregularity complained of is on form as parties are named as Applicant and Respondent. He submitted this should not render the proceedings a nullity. He finally submitted that the action is by originating summons and not judges summons.

Mr. Shears Moses has raised several matters relating to the form of the present application. There is a clear distinction between a Judge's Summons and an Originating Summons. A judge's summons is a process used in applications which specifically provide for it and is used ancillary to the action e.g. as in Summons for Directions. An Originating Summons on the other hand is a process of commencing an action as in a writ of summons. I refer to Order 7 Rule 3 (1) of the Rules "proceedings begun". It is a civil process used in application relating to enactments, deeds, contracts or the construction of a document. This is so because the Plaintiff will not apply for judgment pursuant to Order 16 of the Rules, that is, summary

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judgment. I refer to Order 5 Rules 3 (1); 4(1) (2) of the Rules. Originating Summons are specifically provided for in Order 7 of the Rules. These applications can be either ex parte or inter parties, and the parties are described as in a writ of summons as Plaintiff and Defendant. In the case of an inter parties for originating summons, the notice of the entry of an appearance is stated on the face of the summons. This is so because the Defendant is to be given the opportunity to be heard. Unlike a writ of summons if a Defendant does not enter an appearance within the 14 days period a default judgment cannot be entered and the provisions in Order 13 Rule 10 of the Rules apply that is, the Plaintiff applies for the hearing of the summons after he has filed a certificate that no appearance has been entered.

In the present application, the orders sought are pursuant to the Act which provides that questions or reliefs sought pursuant to an enactment "shall" be begun by originating summons. I agree with Mr. Shears Moses that this provision is mandatory with the use of the word "shall". Even Mr. Nabie has not contended that the action should commence by originating summons but he had instead submitted that any irregularity relating to form can be remedied and treated as a mere irregularity which should not render the proceedings a nullity and relied on Order 2 Rule 1 of the Rules. The present application is backed by words "Originating Summons" but the face of the summons is a Judges Summons. There is no notice of the entry of appearance. The Parties are not described as



Plaintiff and Defendant. These irregularity are clearly in breach of Order 7 Rule (2) (4) (5) of the Rules. As stated supra an originating summons is one form of commencement of an action as provided in Order 5 Rule (1) of the Rules. A civil action can be commenced by either a writ, originating summons, originating motion or petition. A Judges summons is not included in this list and cannot be used as a process to commence civil action. Order 7 of the Rules have made the same provisions for both writs of summons and originating summons, that is, the procedure on concurrent writs and the duration and renewal of writs of summonses.

The next contention of Mr. Shears Moses is that the summons filed does not comply with Order 7 Rule 3 (1) of the Rules. I shall refer to Order 7 Rule 3 (1) of the Rules which reads thus:

Order 7

“3 (1) every Originating summons shall include a statement of questions on which the Plaintiff seeks the determination or direction of the Court or, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by the originating summons with sufficient particulars to identify the cause or causes of action in respect of which the Plaintiff claims that relief or remedy”.

(Emphasis added).

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The Applicant has sought five orders which clearly have been brought within the provisions of Order 7 Rule 3. These provisions are mandatory. It buttresses the submission that originating summons is a process of commencement of an action by use of words "Proceedings begun". In the present application there is no concise statement of the relief or remedy claimed nor are there sufficient particulars to identify the causes of action in respect of which the Plaintiff claims that relief or remedy. The applicant has merely sought several orders but has not shown the causes of action or a statement of the reliefs sought. This is germane to every application commenced by an originating summons. It is my view that this irregularity cannot be cured by Order 2 Rule (1) of the Rules. It goes into the merits of the action and is not a mere irregularity as to its form. This irregularity is different from the title of the parties which could be seen as a mere irregularity. It goes to the root of the action herein and is fatal and cannot be remedied by an amendment and/or addition.

In the premises therefore, the preliminary objection is upheld and the summons dated 25<sup>th</sup> May 2012 is hereby struck out with costs assessed at Le 1,000,000/00.



HON. JUSTICE V. M. SOLOMON J. A.