

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

BETWEEN: -

DAVID TAYLOR
MEMBER OF MOTOR DRIVERS & GENERAL
TRANSPORT WORKERS UNION

IBRAHHIM SESAY - PLAINTIFFS/RESPONDENTS
MEMBER OF MOTOR DRIVER & GENERAL
TRANSPORT WORKERS UNION

AND

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

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

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

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

RULING DELIVERED THE 5TH DAY OF JANUARY, 2012

This is an application by Notice of Motion dated 6th December 2011 filed on behalf of the Defendants/Applicants for the following Orders:

1. That the writ of summons CC 253/2011 T. No. 41 be struck out for being an abuse of the process of the court.
2. That service of the writ of summons on the Defendants/Applicants herein be set aside.
3. That the costs of this application be borne by the Plaintiff/Respondents.

In support of the application is the affidavit of **SHEKH IMAM K. KAMARA** the Secretary General of the Motor Drivers & General Transport Workers Union and the 4th Defendant/Applicant herein. He acknowledged in the said affidavit the writ of summons issued by the Plaintiffs on behalf of the members of the Motor Drivers and General Workers Union (hereinafter called the Union) and deposed that the 1st Plaintiff is not a fully paid up member of the Union and that he ceased being a member since July 2010 by virtue of the Constitution. Further that the 1st Plaintiff being no longer a member of the Union has no business with its operations for him to bring any action against or on behalf of the Union.

The deponent went on to depose that the said 1st Plaintiff lost his membership as he stopped paying his dues since July 2010 and his membership lapsed. He opined that the 1st Plaintiff has been a disgruntled member and brought the action out of mischief and he went on to depose of incidents which caused the disgruntlement.

In the case of the 2nd Plaintiff, he deposed that he was serving the Union until a dispute arose between the said 2nd Plaintiff and members of the Union. Copies of letters of queries, invitations to meetings and minutes which were all ignored by him are attached to the said affidavit. The said 2nd Plaintiff was eventually expelled from Union by letter dated 29th September 2010. He further stated that the 2nd Plaintiff ceased to be a member since February 2010 and therefore has no interest in the Union and no link thereto.

The deponent further deposed that the Interim Committee finished its task in January 2009 and because of the activities of the Plaintiffs have been unable to conduct further elections and that they have never refused to hold elections.

Counsel for the Applicants submitted that the Plaintiffs have no locus standi or interest in bringing this action as they have lost their membership of the Union since 2010 and therefore have no rights to protect. He referred to the membership card and Delegates Conference Card exhibited to the affidavit in opposition and submitted that at the time they were delegates at the Conference, they were members of the Union but that was no longer the case.

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He further referred the court to Article 4 of the Union's Constitution which defines a member and submitted that by virtue of the definition, the Plaintiffs not having paid their subscription for two years are no longer members of the said Union. He stressed that having lost their membership of the Union they have no rights which have been infringed and submitted that to bring an action the Plaintiff must have an interest. He relied on the case of **Samuel Hingha Norman vs. Sama S. Banya & others** a 2006 unreported case of the Supreme Court and also the case of **Yambasu & Others vs. Ernest Bai Koroma** another Supreme Court decision of 2004. He maintained that the Plaintiffs have lost their right to bring the action and prayed that the writ of summons be struck out.

In response to these submissions counsel for the Plaintiffs referred the court to the affidavits in opposition sworn to by the Plaintiffs respectively on 15th December 2011. The contents of both affidavits are identical. They deposed that they are bona fide members of the Union and exhibited their membership cards and that they were delegates to the Special Conference of 23rd January 2009 convened by the Interim Committee of the Union and where the 2nd to 6th Defendants/Applicants were elected. The deponents further referred to the position statement of the said Interim Committee dated 21st November 2011 which reconfirmed their membership of the Union and also their status as paid up members.

They deposed that the entire executive of the Union was dissolved on 5th December 2007 and since the dissolution till date there is no legitimate National Executive Council of the Union in accordance with the Constitution of the Union. They stated that the Defendants were duly elected in the said Special Delegate's Conference but they lack legitimacy and mandate to act for and on behalf of the Union.

They further explained that they stopped paying their dues when they discovered that the Union's funds meant for the Interim Committee to conclude the outstanding elections were being fraudulently diverted into an enterprise owned by the said five committee members called ADSAA.

They deposed that the five men Executive is illegitimate and is acting unconstitutionally and need the other seventeen members to have mandate. That all they are asking for is that election be conducted and the Union be fully legitimate.

Counsel for the Plaintiffs submitted that the bone of the contention is that at this time there is no National Executive Council of the Union and no central Executive Council charged with full authority to manage the day to day activities of the organisation. He contended that the Executive as constituted lacks the authority or capacity to determine who is not a fully paid up member because they themselves are illegal in their composition.

The main issue to be determined is whether the Plaintiffs have locus standi to bring this action. Counsel for the Applicants has relied on the Supreme Court decisions where it was held that the Plaintiff did not have the locus to bring the action when he pursued the matter as a public spirited law abiding and constitution-compliant citizen of Sierra Leone --- in the general interest of maintaining and upholding the National Constitution.

Counsel for the Applicants has urged that the Plaintiffs having lost their membership have no rights to protect. I should at this point refer to the position statement made by the Interim Committee in respect of the writ of summons issues herein, Exh "D". In the statement the Applicants agreed with all the issues mentioned in the particulars of claim in the writ of summons with the exception of the monetary claim.

It is my view that the acknowledgement by the Interim Committee of the complaint by the Plaintiffs makes a lot of difference and takes the case out of the class of those Supreme Court decisions relied upon by counsel for the Applicants.

In this case the Defendants have acknowledged the case for the Plaintiffs that there is a need for the elections to be conducted. In the light of that the Defendants cannot state that the Plaintiffs have lost their right or have no right to protect.

It is a fact that at present there is no National Executive Council of the Union charged with full authority to manage the day to day activities of the Union. The Interim Committee was appointed to make necessary arrangements for the conduct of the Delegates Conference and election of a new Executive of the Union. This was in 2008. See Exhibit "C" -⁴ attached to the affidavit in opposition.

I agree with counsel for the Plaintiffs submissions that the "Executive" as presently constituted lacks the legal mandate to determine or challenge the membership of the Plaintiffs. Their mandate was quite specific and it was principally to conduct the election of a new Executive, the former Executive having been dissolved. They are therefore not in a position to refuse to recognise the rights of the Plaintiffs to challenge their activities and bring this action to court in a bid to regularize the situation.

It is clear that the Plaintiffs are not strangers to the Union but have been active members thereof. They have in their affidavits given plausible reasons for refusing to pay their dues. It is my view that the situation in the Union is such that efforts to regularize the Union ^{and} ensure that it has an Executive in conformity with ^{its} constitution should not be stifled.

In my judgment when once there is a legally constituted Executive all the complaints made against members of the Union can be duly investigated.

In all the circumstances of this case and in the interest of the entire membership of the Union, I believe the circumstances are quite peculiar and I must stress that even the Defendants/Applicants have recognised and acknowledged the need for the status of the Union to be regularised and legalised. I would therefore refuse the application and allow the Plaintiffs to proceed with their action. No order as to costs.

A-Showers

A. SHOWERS

5/1/2012

JUSTICE OF COURT OF APPEAL