

CC 167/2010                      2010                      C NO. 7

IN THE HIGH COURT OF SIERRA LEONE

(COMMERCIAL AND ADMIRALTY DIVISION)

ADMIRALTY ACTION IN REM AGAINST THE FISHING VESSELS "F/V  
ICOZA SHRIMPER, F/V NANGBETO SHRIMPER, F/V KAWA FISHING  
TRAWLER, F/V AMOULOME"

BETWEEN:

COASTAL FISHING COMPANY  
VICTOR KAMARA    - PLAINTIFFS

AND

KALYPSO COMPANY  
SPRIDIMITRIS DIMOULAS  
SIDIBAY    - DEFENDANTS

COUNSEL:

E N B NGAKUI ESQ for the Plaintiffs  
A F SERRY-KAMAL ESQ for the Defendants.

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE  
JUSTICE OF APPEAL

RULING DELIVERED THE 7 DAY OF JUNE, 2012

1. By Notice of Motion dated 18 May, 2012, the Defendants' Solicitors have applied to this Court that I recuse myself from presiding over this case on the ground that I had whilst in private practice brought action against the vessels whose arrest I Ordered; and for an Order that the Orders already made by this Court, be discharged.
2. The Application is supported by the affidavit of Mr Serry-Kamal himself, deposed and sworn to on 18 May, 2012. To that affidavit is exhibited as AFSK1, a copy of a writ of summons issued by the then firm of Browne-Marke on 13 December, 2006 against the owners of the vessels, F/V Kawa and other vessels; as AFSK2, a copy of an Order of this Court dated 15

December, 2012 made by EDWARDS, J; and as AFSK3 a copy of an Order of this Court made by EDWARDS, J on 18 April, 2007, setting aside the writ of summons, and the Warrants of arrest the Learned Judge had issued. Save for slight difference in the spelling of one of the name of one of the vessels, ICOZA in these proceedings, and KOZAH in the earlier proceedings; and a slight difference in description, AMOU in the earlier proceedings, and AMOU LOME in these proceedings, and the absence of the vessel F/V FROSTY, from these proceedings, the vessels appear to be the same in both proceedings.

3. I have no personal recollection of the matter, and it was decided on 18 April, 2007 after I had become a Judge. The apparent conflict was only brought to my attention by Mr Serry-Kamal himself, when I asked to see him in chambers a few weeks ago, on an issue relating to the action, and he informed me that he had filed this motion for recusal, as he had just recently been informed by his clients of this. Usually, when it appears to Solicitors or Counsel, that a Judge who was in private practice before his appointment, has been assigned a case for hearing in which he may have appeared for one side or the other in previous proceedings, his attention is quietly brought to this fact, and he normally recuses himself without any formality. It is unlikely that any Judge would remember intimately, the details or outlines of all the cases he handled whilst in private practice. So, if the facts which are now contained in Mr Serry-Kamal's affidavit had been brought orally to my notice, I should have done just this. But by filing a Motion, it is incumbent on me to deliver a Ruling on the merits of the Application.
4. The Application does not disclose whether the parties in this action are the same as those in the earlier action. In the earlier action, proceedings were brought against the owners of these vessels, by Transmarine Shipping & Trading Limited. Mr Serry-Kamal has not stated whether this company, and/or its members or Directors or officials, are his current clients. Nor has Mr Ngakui in his affidavit in opposition deposed and sworn to 1 June, 2012 done so either. So, it seems, the persons from whom Mr Serry-Kamal received instructions, and so also Mr Ngakui, are not the same persons from whom my now defunct firm received instructions in 2006. If that had been the case, it would be most surprising, as nothing has been said by either Counsel since this matter first came before me in

August, 2010 whilst I was presiding in this Court as Vacation Judge, in succession to SOLOMON, JA. Since then, I have made several Orders, some in favour of the Plaintiffs, and some in favour of Mr Serry-Kamal's clients. In fact, as is my usual practice, on all occasions when the case has been called up for hearing, I have called out the names of the parties. The persons who have identified themselves as representing the 1<sup>st</sup> Plaintiff company, and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, and the 2<sup>nd</sup> Plaintiff and the 3<sup>rd</sup> Defendant themselves, are not persons I recognise, or recall dealing with as Solicitor and/or Counsel, before my present appointment. Nor has there been the slightest hint these past 21 months, from either the Plaintiffs' corner, or the Defendants' corner, nor from the 2<sup>nd</sup> Plaintiff or the 3<sup>rd</sup> Defendant, who have invariably been in Court during the hearings, that anybody in either camp, had had dealings with me, or my now defunct firm, in the past, either in relation to this matter, or any other matter. None of the affidavits filed by Mr Serry-Kamal prior to 18 May, 2012 have made any reference, however oblique, to the earlier proceedings, or to my participation in those proceedings. Yet, suddenly, it has dawned on the minds of Mr Serry-Kamal's clients that in 2006 I did participate in those proceedings. This reminds me, if my memory serves me right, of the same application made by Counsel for Mr Basma, in the now Supreme Court decided case of WANSA v BASMA whilst the case was winding its way painfully through the Court of Appeal. During the course of those proceedings, Counsel for Mr Basma requested that the present the Honourable the Chief Justice who was a member of the panel, should recuse herself on the ground that Counsel for Mr Wansa was a relative of hers. There was no suggestion of impropriety, nor that the Honourable Chief Justice would not do right by the parties because of reasons of kinship, or, would not be impartial. She was a member of a panel of three Justices. But she did recuse herself, I learnt at the insistence of Counsel.

5. To return to the position taken by Mr Serry-Kamal, it seems to be that since the subject matter of the earlier proceedings were the vessels whose arrest I Ordered in March, 2011, I ought not to continue to preside over this action. As I have stated earlier, no objection has been taken to my handling of this action over the past 21 months. This issue has apparently only arose, if I am to accept what Mr Serry-Kamal has

deposed to, that he was only told recently about my participation in the earlier proceedings, as a result of the Orders I made on 4 April, 2012. I acceded to Mr Serry-Kamal's application which was not opposed by Mr Ngakui, for the sale of the vessel AMOU, because it was listing badly, and was about to sink; and also, notwithstanding Mr Serry-Kamal's determined opposition thereto, I Ordered the sale of the other 3 vessels on the application of Mr Ngakui. As I am only human, there is therefore the nagging or lurking doubt in my mind as to whether the fact of my participation in the earlier proceedings would have remained in the dark, had I refused Mr Ngakui's application. The concatenation of events turns these niggling doubts into troubling fears that future proceedings in these Courts presided over by Judges such as ourselves who have been previously in private practice, will be scuttled, by the sheer expedient of allowing the trials to go forward un-protested, until an unfavourable decision is reached against either one or the other party. The papers exhibited to Mr Serry-Kamal's affidavit are not secret documents. And since I had made several Orders in this Action before, my name was not unknown to Mr Serry-Kamal's clients prior to 18 May, 2012. If, as is usually the case in private practice, and as I am led to believe by the contents of Mr Serry-Kamal's affidavit, there was communication between Mr Serry-Kamal and his clients, it seems rather strange that the request for my recusal should have come so late in the day, and without any informal intimation. Coming so late in the day, it is not improbable that the intention of the Applicants may be other than preserving the niceties and conventions of judicial impartiality. It may possibly have more to do with hamstringing the judicial process.

6. The Application is opposed by Mr Ngakui in his affidavit deposed and sworn to on 1 June, 2012. I have gone through it, and I have noted the points raised by him. They are well taken, but this Application is not confined to the bare bones of identity: i.e. whether the parties in the action herein, are the same as the parties in the 2006 litigation. It concerns the age-old adage that justice must not only be done, but must be seen to be done. It concerns the need for impartiality in judicial proceedings. It concerns the maintaining of confidence in the judicial process and in Judges. As such, I have to look at these larger issues, rather than confine or restrict myself to the issue of whether the

parties in these proceedings are the same as those in the earlier litigation. There has been no violation of Section 120(14) of the Constitution of Sierra Leone, 1991 - I have not presided over, nor participated in an appeal from my own decision. It concerns the provisions of the "Code of Conduct for Judicial Officers of the Republic of Sierra Leone." Clause 5.3.(e)(ii) thereof provides that: "*A Judicial Officer shall disqualify himself from participating in any proceedings in which he is unable to decide impartially or in which a reasonable, fair minded and informed person might question his impartiality, including instances in which:- (i) he has actual bias or prejudice concerning a party or a party's legal practitioner or has knowledge of the dispute or evidentiary facts concerning the proceedings; (ii) he served as a legal practitioner in the matter in controversy or, was a witness concerning it.*"

7. This Application, as I have said above cannot be confined to whether the parties in this action are the same in the earlier litigation; I do not wish to adjudicate upon the notional boundaries of whether or not I was "*a legal practitioner in the matter in the matter in controversy.*" I do not believe I was; but the Applicants' Counsel believes I was. As a Judge, I cannot ignore the apprehensions of a party to litigation over which I am presiding if I think and believe that continuing to preside, might bring the Bench into disrepute. But I can, as I have tried to do here, adjudicate impartially and dispassionately, on an Application brought to my Court. I have resisted the urging of Defendants' Counsel that I should recuse myself once the Application had been brought before me; that there was no need to hear from Counsel for the Plaintiffs; nor, for a considered Ruling. I do not agree with him. The Application is on, and forms part of the record of this case. It follows that there must also be a Ruling on, and which will form part of this record.
8. Mr Serry-Kamal first appeared before me in this matter on 4 March, 2011, 15 months ago. On 17 November, 2011 I granted leave to his clients to file their Statement of Defence out of time. That Order, together with others, appears at pages 10 and 11 of my minutes. On 13 August, 2010 SOLOMON, JA had made certain Orders which appear on page 2 of her minutes. Those Orders are not impugned in the present Application, and they therefore stand. As regards the Orders I have already made, they would not have been made, as I have stated repeatedly above, if the

issues raised in this Application, had been raised by Mr Serry-Kamal as of 4 March, 2011. They were never raised then, and were not so raised for another 14 months. Mr Serry-Kamal has no one to blame for this but himself. If he had been in communication with his clients ever since he took over the brief, a fact this Court can reasonably imply, the documents he has exhibited to his affidavit in this Application, should have been brought to his attention. That, as he deposes in his affidavit, they were only brought to his attention after an Order had been made for the vessels arrested to be sold, is his responsibility, and not that of this Court. I cannot therefore accede to that part of his Application which requests a Discharge of those Orders. Whether or not they should be discharged will be a matter for another Judge to decide.

9. I recuse myself from Presiding further in this action.



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE, JUSTICE OF APPEAL