



**IN THE HIGH COURT OF SIERRA LEONE**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**FAST TRACK COMMERCIAL COURT**

Case No: FTCC 110/15

THE MATTER BETWEEN:

MR. DAVIDSON PETERS-JOHN

-PLAINTIFF

AND

ROYLAND D. FRAZER

-DEFENDANT

C. J. PEACOCK ESQ

-COUNSEL FOR THE PLAINTIFF

GARBER & CO

-COUNSEL FOR THE DEFENDANT

**BEFORE THE HON. MR. JUSTICE SENGU M. KOROMA JA**

**RULING DELIVERED ON THE 20<sup>TH</sup> DECEMBER, 2016**

1. By a Notice of Motion dated the 16<sup>th</sup> June, 2016, the Plaintiff/Applicant (hereinafter referred to as the "Plaintiff") applied to this Court for leave to amend the statement of claim and reply herein and defence to counter-claim in the interest of justice and in order to enable the Court to determine the real questions in controversy, amongst others.
2. The Application was supported by the Affidavit of Mr. Davidson Peters-John sworn to on the 16<sup>th</sup> June, 2016 together with the exhibits attached thereto.
3. The thrust of the Plaintiff's application was that after a perusal of the business documents of Tafson's Enterprises, the Defendant herein he realized that it was not a sole proprietorship but a Limited Liability Company.
4. The Defendant opposed the application by an Affidavit sworn to by Derek Beoku-Betts on the 27<sup>th</sup> June, 2016. In the said affidavit, Mr. Beoku-Betts swore that the Writ of Summons clearly showed that the Plaintiff was suing the Defendant in his personal capacity. In the defence filed however, the Defendant clearly stated that he was the Chief Executive Officer of Tafson's Enterprise Limited duly registered under the Laws of Sierra Leone. During the ADR process in the months of January and February, 2016, the issue of the correct party was raised by the learned Judge but the Plaintiff did nothing towards amending the Writ regarding that aspect but instead amended the Writ to add a claim for special damages. Mr. Beoku-Betts proceeded to refer to a list of documents in which the Plaintiff failed to indicate or

hint that he was suing any person other than the Defendant in his personal capacity.

In paragraph 33, Mr. Beoku-Betts stated that “in the event that the Court is minded to accede to the request of the Plaintiff, it be upon condition that significant costs are paid to the Defendant for all the work done up to trial and including resisting the current application.”

5. Counsel on both sides made legal submissions and cited authorities to support their respective positions. I am grateful to both Counsel for the quality of their submissions but based on the requirements of the law, I am inclined to agree more with the Counsel for the Defendant. The Plaintiff had all the opportunity to amend his pleadings at an earlier stage of the proceedings and not when pleadings had closed, Court bundles filed and witness examined. However, in the interest of justice and to avoid invoking the Court’s draconian power to strike out or dismiss the action, I will allow the amendment on terms.

6. For the reason given above, I Order as follows:-

1. Leave is hereby given for the Plaintiff to amend the statement of Claim and reply herein and the defence to counterclaim.
2. The Plaintiff shall file and serve the amended statement of claim, reply and defence to counter-claim within 7 clear days from the date of this Order, failing which, the matter would be deemed to have been dismissed.

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3. The Defendant shall file and serve his amended defence and counter-claim within 7 days after the expiration of the period limited for filing and serving the amendments granted the Plaintiff.
4. Costs of Le 12,000,000/00 to be borne by the Plaintiff to the Defendant which must be paid within the period limited for filing and serving the amended documents as at 2 above.
5. Matter adjourned to Monday, 23<sup>rd</sup> January, 2017.



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Hon. Justice Sengu M. Koroma JA