



IN THE HIGH COURT OF SIERRA LEONE
LAW COURTS BUILDING
SIAKA STEVENS STREET

MISC. APP 88/17

VICTORIA MARTYN & ORS.

APPLICANT

AND

ABIODU SHULENKAR WILLIAMS

RESPONDENT

REPRESENTATION:

ABDULAI & ASSOCIATES
(EMMANUEL SAFFA ABDULAI & M.S. NDOLLEH)

COUNSEL FOR THE APPLICANT

BMT LAW CHAMBERS
(RADCLIFF A.D. JONES)

COUNSEL FOR THE RESPONDENT

BEFORE THE HON. MR. JUSTICE SENGU KOROMA JA.
RULING DELIVERED ON THE 30th MAY, 2017.

1. The Applicants herein applied by Originating Summons dated the 21st day of February, 2007 seeking certain Orders. An appearance was entered for and on behalf of the Respondents by BMT Law Chambers on the 27th February, 2017. After a number of adjournments due to the absence of Counsel for the Applicants (deputized on those occasions by Mr. A.S. Ndolleh as the Court was informed by Mr. Ndolleh himself)
2. The Application came up for hearing on the 9th May, 2017. As Mr. Ndolleh starts making his application, Mr. R.A.D. Jones acting for and on behalf of the Respondent takes a preliminary objection on the ground that there is no affidavit in support of the application filed. He refers this Court to page 2 of the Originating Summons in which it is purported that the affidavit in support is that of Emmanuel Saffa Abdulai sworn to on the 21st February, 2017 but on a perusal of the bundle of papers filed, there is no such affidavit. The affidavit attached to the Summons was that of some other person.
3. Mr. Ndolleh in reply submits with every candour that he sees the point made by his colleague but he has certain authorities both statutory and case law which he will rely on. He applied for short adjournment to allow him time to submit the said authorities.
4. The matter was adjourned to the 10th May, 2017. On the adjournment date, Mr. Ndolleh did not appear in court nor did he do so on the next date. He only appeared in Court on the 23rd May, 2017 fortified by the presence of his Senior Mr. Emmanuel Saffa Abdulai and apologized for failing to provide the authorities as promised.
5. I have narrated this in order to guide junior Counsel to be fully seised of the facts of any matter they are deputizing their seniors in and if they are not, instead of making bold promises must apply for an adjournment in order to consult their seniors. This is what legal practice is all about.

6. Mr. Emmanuel Saffa Abdulai in his response to his colleague's preliminary objection submits as follows:
 - a. That Mr. Jones has not made his application in the manner prescribed in the High Court Rules 2007 regarding objections on the ground of irregularity. In other words, Mr. Jones is in breach of Order 2 (2) of the High Court Rules 2007
 - b. That the irregularity complained of does not go to the merit of the application. He refers to Orders 2 sub rule 1 (2). The case of the Applicant is a determination of whether she can benefit from his deceased mother's estate. The irregularity alleged can be cured.
7. Mr. Jones in answer thereto, submits as follows:
 - a) That the failure of the Applicant to attach the affidavit in support is to be treated as significant. Order 2 Rule 2 (2) states that where the irregularity is fundamental, the motion could be set aside. By filing properly, they will not be deprived of Justice.
 - b) That Order 2 Rule 2 (2) uses the words "May" which imports a discretion as to whether the Application can be made *vi*a voce or in writing.
8. I have listened to both Counsel and reviewed the authorities cited (particularly the High Court Rules, 2007). I note that the objection is rooted on the issue of irregularity. The question is whether the irregularity complained of, that is the failure of the Applicant to attach the correct affidavit in support as stated on the face of the motion paper is so significant as to warrant this Court to strike out the summons.
9. What are the principles guiding this Court in dealing with striking-off an action on the ground of irregularity?
10. The main principle now is derived from the provisions of Order 2 of the High Court Rules, 2007 under the rubric "Effect of Non Compliance"
11. To my mind, the failure of the Applicant to attach the correct affidavit in support is an irregularity. On the general point, I agree with Mr. Jones.

However, it can be cured without causing injustice.

- 12 The Applicant has actually filed an affidavit in support attached to the Originating Summons dated the 21st day of February, 2017. What is wrong here is that the Deponent named on the face of the Originating Summons as the deponent on whose affidavit the action is based has not sworn to such an affidavit. This to me falls under the category of clerical mistakes but committed at a higher level.
- 13 In the circumstance, I will apply the provisions of Order 2 Rule 1 sub rule1, which is *ipsisima verba* Order 2 Rule 1 of the English Rules, 1999. This Rule gives this Court the power to treat any failure to comply with requirements of the High Court Rules 2007 as an irregularity: Order 2 (1) (2) gives power to this Court to allow amendments, to be made in such situations.
- 14 The preliminary objection is upheld but instead of striking off the action will order the Applicant to cure the said irregularity by making the necessary amendment. No order as to costs.



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Hon. Mr. Justice Sengu Koroma (J.A.)