



IN THE HIGH COURT OF SIERRA LEONE
COMMERCIAL AND ADMIRALTY DIVISION
FAST TRACK COMMERCIAL COURT
OFF WALLACE JOHNSON STREET-GOVERNMENT WHARF

FTCC 234/16

ALPHONSO A. YARJAH

PLAINTIFF

AND

TAK LAM WONG & ORS.

DEFENDANT

REPRESENTATION:

LANSANA DUMBUYA ESQ.

COUNSEL FOR THE PLAINTIFF

MICHAEL & MICHAEL

COUNSEL FOR THE DEFENDANTS

BEFORE THE HON. MR. JUSTICE SENGU KOROMA JA.
RULING DELIVERED ON THE 1ST NOVEMBER, 2017

1. The Defendants/Applicants (hereinafter referred to as "the Applicants" applied to this court by Notice of Motion dated 21st September, 2016 for the following orders:-

1. That the Honourable Court grant a stay of all subsequent proceedings pending the hearing and determination of this application.

2. That this Honourable Court grants an Order setting aside the Writ of Summons and service of same on the following grounds.

a) That in breach of Order 6 Rule 1

3. A Declaration that suing the 1st Defendant as Director and shareholder is an abuse of process and in breach of the fundamental rule of law that a corporation is a legal entity distinct from its members.

4. Further and/or in the alternative that in the circumstances of the case brought by the plaintiff/respondent (hereinafter referred to as the "Respondent") against the Applicant the Fast Track Commercial Court has no jurisdiction over the Applicants in respect of the relief or remedies sought in the action.

5. Any further Orders as this Honourable Court may deem fit and just.

6. That the costs of this application be costs in the cause.

2. At the hearing of the application, Mrs. B. Michael, Counsel for the Applicants relied on and used the affidavits of Edward Saffa and Ibrahim Sesay sworn to on the 21st day of September, 2016 together with the exhibits attached thereto.

3. In her submission, on the 5th April, 2017, Mrs. Michael complained of the following irregularities in the writ of summons dated 9th August, 2017.

a) That the 1st Applicant (a natural person) was not personally served with the writ of summons in breach of Order 10 (2) (1) of the High Court Rules, 2007. She argued that there was no Order or leave for substituted service and so service of the writ on the security guard amounted to no service.

4. Mr. Lansana Dumbuya, Counsel for the plaintiff in reply on this point submitted that the defendants were personally served. In any event since such an application ought to be made within 10 days from the date of entering appearance. The 1st Applicant was out of time. He referred this Court to Order 12 rule 16 (A). Mr. Dumbuya further submitted that in the affidavit in opposition, it was never deposed that the 1st Applicant was served as it was while the process of service was ongoing that Solicitors for the Defendants entered appearance for all of them.

5. Mrs. Michael in reply submitted that her entering appearance would not diminish the import of the breach. She referred the Court to Order 12 Rule 15 and the Supreme Court of Ghana decision in the case of **BARCLAYS BANK (BANK) LIMITED VS. GHANA CABLE CO. LTD.**

6. In determining this issue, I shall look at Order 10 Rule 3 (3) Order 12 Rule 15 and Order 12 Rule 16 of the High Court Rules 2007

7. Order 10 Rule 3 sub rule 3 provides that where the Writ is not duly served on the Defendant but he enters appearance, he shall be deemed, unless the contrary is shown to have been duly served on him and to have been served on the date on which he enters appearance.

8. The foregoing provision is subject to Order 12 Rule 15 of the High Court Rules, 2007. This Order provides that the entry of appearance shall not be construed a waiver by him of any irregularity in the Originating process or service thereof.

9. At this point, I agree with Counsel for the Respondents that the Applicants have not complied with the Rules. But the Rules place an obligation on the Respondent under Order 12 Rule 16 who wishes to dispute the Jurisdiction of the Court by reason of any irregularity referred to in Order 12 rule 15 or on any ground to within the time limited for service of a defence, apply to the Court for

a) An Order setting aside the process or service of process on him. The question here was had the Respondent complied with this provision? Was the objection been raised within the time limit allowed by the Rules?

10. In this matter, the Notice and Memorandum of Appearance was entered and filed on the 12th August, 2017. The Applicant filed this present application on the 21st September, 2016 39 days after entering appearance. This infringes the provision of Order 12 Rule 16 of the High Court Rules, 2007. By virtue of this Rule, the Applicant was to have applied to this Court within the time limited for filing defence after

appearance. The time limit for taking such a step is provided for under Order 21 Rule 2 shall be 10 days after the expiration of the period limited for appearance.

- 11.** Here the Writ of Summons was served on the Defendants on the 10th August, 2016. Appearance was entered on the 12th August, 2016. Under the Rules, the Applicants had 14 days to enter appearance to the Writ. So for the purpose of Order 12 Rule 16, time started to run from the 12th August, 2016.
- 12.** The objection must have been lodged on the 26th August, 2017. The above analysis means that there is no valid Jurisdictional challenge before this Court and therefore Order 10 (3) (3) shall apply.
- 13.** All the other obligations raised which to my mind are necessary to the development of our Jurisprudence could be conveniently disposed of in the light of my foregoing statements.
- 14.** There is however one obligation raised by Basita Michael Esq. which I need to specifically comment on which is whether a party can be sued as both shareholder and Director. Mrs. Michael argued that suing one person as Director and shareholder contravenes one of the fundamental principles of Company Law: a Company has an existence independent of its members. I agree with Counsel for the Applicant. If the Respondent wanted to sue the 2nd Defendant, he should have done so in his private or representative capacity. He cannot sue the 2nd Defendant for wrongs allegedly committed by the company.

For the reasons given above, **I Order as follows:-**

- 1.** That the Respondent herein amends his Writ of Summons by stating the capacities of the parties therein within 10 days of the date of this Order.
- 2.** That the Applicant files a defence within 14 days after the expiration of the time limited for filing and serving the amended Writ of Summons
- 3.** That the Respondent files a reply and close all pleadings within 7 days after the expiration of the period limited for filing the defence to the amend Writ of Summons.
- 4.** That the cost of this action shall be costs in the cause.



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