CC: 288/18 2018 B. N0. 21

Between:

Ron Campbell - Plaintiff/Applicant

39 Charles Street

Freetown

And

Isatu Jalloh Bradshaw - 1st Defendant/Contemnor

Aminata Jalloh - 2nd Defendant/Contemnor

Alpha Yillah - 3rd Defendant/Contemnor

Old Kent

Mama Beach Road

Counsel: E. T. Koroma Esq. for the Plaintiff/Applicant

A. B. Moisia Esq. for the Defendants/Contemnors

Ruling on a Preliminary Objection About Whether Every Interlocutory Application Subsequent to the Court's Directions Ought to be Made Pursuant to the Summons for the Bundle to be Restored So that Counsel for the Applicant can be heard on that Application; Delivered by The Hon. Justice Dr. Abou B.M. Binneh-Kamara, J. Thursday, 13th October 2022.

1.1 Introduction

This Honourable Court on 5th May 2022, was poised to hear E.T. Koroma Esq. (Counsel for the Plaintiff/Applicant) on an application made by notice of motion, dated 23rd March 2022, bolstered by a sixteen (16) paragraph affidavit, sworn to by one Alfred Nathaniel Martin of N0.19 Thompson Street, Kissy, Freetown, in the Western Area of the Republic of Sierra Leone. The application was filed pursuant to Order 51 of Constitutional Instrument N0.8 of 2007, the High Court Rules 2007 (hereinafter referred to as The HCR, 2007). The order in accordance with which the application is made touches and concerns contempt proceedings. Immediately E.T. Koroma Esq. moved the Court on the application, A.B. Moisia Esq. (Counsel for the Defendants/Contemnors), raised a preliminary objection; and the Court henceforth disallowed E.T. Koroma Esq. to continue with the application and as a matter of procedural congruity, allowed A.B. Moisia Esq. to sequentially frame the grounds on which the objection is built.

1.2 The Objection's Building Blocks

A.B. Moisia Esq. constructed the preliminary objection on the following grounds:

1. This Honourable Court has heard the application for directions by way of summons and has accordingly directed the processes, guiding and guarding the expeditious proceedings of this matter. And the respective parties to this action have punctiliously complied with the Court's directions. Therefore, should Counsel be heard on the consequential application, he is obliged to come under the summons for direction for the bundle to be restored. This is the precise procedural approach that will have given Counsel the appropriate legs to stand on. A.B. Moisia Esq. relied on Order 28 Rule 6 (3) of the HCR, 2007 in justification of this submission.

2. Alternatively, Counsel further submitted that he should be given the opportunity to file an affidavit in opposition, because it is his right to do so.

1.3 <u>The Objection's Contradistinctions</u>

E.T. Koroma's submissions in contravention of the objections are predicated on the following grounds:

1. There is an affidavit of service in the file. This affidavit was duly paid for, dated 29th March 2022, and was served together with the notice of motion on the Defendants/Contemnors. The rules are clear on these issues. It would have been appropriate for the Defendants/Contemnors to have handed over the processes to their Counsel, noting that they could plead with this Honourable Court to grant them an adjournment at this stage on the point that they were only served this morning.

2. The argumentation that the application should have been made under the summons, is a wrong interpretation of the rules. Counsel emphasized that applications, concerning contempt proceedings, should not be made under the summons for directions for the bundle to be restored. Counsel relied on Order 51 Rule 2 (1) of the HCR, 2007. Thus, Counsel further argued that the application is proper before the Court and should not have been made under the summons, noting that the objection amounted to a waste of the Court's time and would ask for a cost of Le 12,000,00 (twelve million leones), should the application be dismissed.

1.4 <u>The Reply to the Contravening Submissions to the Objection</u>

A. B. Moisia Esq. in reply to the contravening submissions to the objection, said Order 51 Rule 2 (1) is not applicable in circumstances wherein a mater has proceeded to trial, adding that Order 28 Rule 6 (3) is very clear on how an application can be made after directions have been given, pursuant to a summons.

1.5 <u>The Analysis.</u>

The law on preliminary objection has evolved with so many decisions, which the Superior Courts of Judicature in Sierra Leone and other countries in the Commonwealth jurisdictions have handed down on decided cases. The core principle, upon which every preliminary objection is built, is distilled from the idea, that a preliminary objection must raise a point of law; should it be heard and determined by any court of competent jurisdiction. The following cases have clearly elucidated this point: Taakor Tropical Hardware Co. Ltd. **v.** The Republic of Sierra Leone (ECW1 CCJ/JUD/02/19 (2019) ECOWAS CJ1 (24TH January 2019); Zaria Amira Amina Mara **v.** Managing Director Standard Chartered Bank and Others (FTCC 237 of 2018) (2019) SLHC 47 (11 July 2019); Yaya **v.** Obur and Others (Civil Appeal 81 of 2010) (2020 UGHC 165 (30 October 2020); Kassam Kousa **v.** Alie Basma (CC:215/2019/C N0.31); Lovetta Bomah and Others **v.** PMDC (cc306 of 2018) 2021 SLHCL PED 27 (16 March 2021); S **v.** Joseph Saidu Mans. and Another (CC: 31 of 2018 2021 SLHC LPED 27 (16 March 2021).

In fact, a preliminary objection is not a preliminary objection, if it is based on facts, which evidential importance, can obviously be determined during the course of the proceedings. Thus, when heard, a preliminary objection can either be disposed of immediately; or its ruling may be deferred, in circumstances wherein its

determination, will undoubtedly impact the outcome of a matter {see Yaya **v.** Obur and Others (Civil Appeal 81 of 2010) (2020 UGHC 165 (30 October 2020}. However, the preliminary objection, on which this ruling is based, is bound to be heard, because it is clearly predicated on procedural rules of law (not on facts); and should be immediately determined, because the legal issues that characterize it, would have no impact on the final outcome of this matter, should it proceed to its logical conclusion.

Thus, for ease of reference, the provision as referenced in The HCR 2007, in justification of the grounds of the preliminary objection, is set out above, under the rubric: 'The Background to the Preliminary Objection'.

I will start with the Defendants/Contemnors' Counsel's second submission that he should be given the opportunity to file an affidavit in opposition to the consequential application, that is being objected to. This is a point that this Honourable Court will not repudiate; as it is Counsel's responsibility (in the exercise of his right to defend his clients) to respond to any application, which he considers inimical to their case. Had he stuck to this point, then there would have been no need to raise the first, which this Honourable Court cannot leave to fester unaddressed in this ruling. Nonetheless, whilst unpicking Counsel for the Plaintiff/Applicant's response to the objection, I reckoned that he tacitly conceded to this same point, when he said that the Defendants/Contemnors, who alleged that they were only served on the day the consequential application was to be moved, should have requested for a date, through their Counsel, so that would be in a better position to respond to the application. Thus, in order to expedite the

trial and save time, it would have been rationally expedient, for the first limb of the objection, to have been relegated to the doldrums.

However, I now proceed to deal with the objection's first limb, which is based on the submission that the consequential application is interlocutory and should therefore have been made, pursuant to the summons for directions; that is for same to be restored so that the Plaintiff/Applicant's Counsel, could have been in clearly sophisticated procedural position to make the application. Counsel's position is that as it stands, it is procedurally unconscionable for the application to be made in the manner, depicted in this Honourable Court's records. Of course, this seemingly controversial submission is contested and debunked by Counsel for the Plaintiff/Applicant as stated in 1.3. This Honourable Court now avails itself to the opportunity to juxtapose the submissions of both Counsel and simultaneously state the position of the law as it is, to resolve the contentions raised in the argumentations. In doing this, I will rely on the HCR 2007 and the English Supreme Court's Annual Practice of 1999 (the White Book).

The Defendant/Contemnors' Counsel generically submitted that the provision in Order 28 Rule 6 (3) of The HCR 2007, indubitably settles the contentious issue, which he raised in the very first limb of his submission. The provision thus reads:

> **Any application subsequent to the summons for directions and before judgment as to any matter capable of being dealt with on an interlocutory application in the action shall be made under the summons by two clear days' notice to the other party stating the grounds of the application.**

While deconstructing this provision for meaning and essence, I reckon that prima facie, it appears that the Defendants/Contemnors' Counsel's objection to the

foregoing notice of motion is compelling enough for this Honourable Court to give credence to, and thus uphold it, without a scintilla or shred of doubt. First, the provision is mandatory and not directory. This interpretation is given succour by the semantic value of the auxiliary verb 'shall' as used in the context. Secondly, the provision is so generic that it apparently applies to every interlocutory application, that is subsequent to the summons for directions prior to the judgment of any matter. Thirdly, no two clear days' notice is given to the other party stating the grounds of the application. Nevertheless, this interpretation is not the only one that can be distilled from the foregoing provision. This point is strengthened by the fact that subrule (3) is only a subrule in the wider context of Order 28 Rule 6. Thus, to grasp the purport of subrule (3), it is connotatively significant to put the whole of Order 28 Rule 6 into perspective and simultaneously analyse it in tandem with the actual purport of the rule as enshrined in paragraph 25/7/2 of the White Book.

Thus, Order 28 Rule 6 (1) (2) and (3) of The HCR 2007 reads:

> **Any person to whom the summons for directions is addressed shall so far as practicable apply at the hearing of the summons for any order or directions which he may desire as to any matter capable of being dealt with on an interlocutory application in the action and shall, not less than 7 days before the hearing of the summons, serve a notice on the other party or parties specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons**
>
> **If the hearing of the summons for directions is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or directions not asked for by the summons or in any notice not given under**

subrule (1), he shall not less than 7 days before the resumed hearing of the summons, serve on the other party a summons specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons or in such notice.

Any application subsequent to the summons for directions and before judgment as to any matter capable of being dealt with on an interlocutory application in the action shall be made under the summons by two clear days' notice to the other party stating the grounds of the application.

Essentially, the side note to the aforementioned rule concerns 'duty to make all interlocutory applications on summons for directions'. Whereas it cannot be denied that contempt proceedings are interlocutory, does that presuppose that such proceedings are covered by this rule? If the rule says interlocutory applications after the summons for directions and before judgment, shall be made pursuant to the summons for direction, is that provision generic enough to embrace every post-summons for directions applications preceding judgment? If this question is answered in the affirmative, can the Court (for instance) grant applications for interlocutory injunctions not made under the summons? The obvious answer is that it is practically impossible and procedurally unconscionable to conclude that such applications cannot be granted. There are a plethora of precedents in our jurisdiction, confirming this position of our adjectival law {see Dawn Macauley **v.** Bob Coker CC: 23/22 M. N0.1, Ron Campbell **v.** Isatu Jalloh Bradshaw and Others CC: 288/18 B. 21 etc.}.

Thus, applications for interlocutory injunctions are bound to be made at any time any issues that are cognate with the litigation and detrimental to the interest of

any party come up. And it behooves the courts to address them as a matter of urgency, though that urgency must not under any circumstance be self-induced by the party seeking the injunctive relief. Therefore, it procedurally logically follows, that the side note to the provision in Rule 6 of Order 28 thus has restrictive applicability. It does not generically apply to every post-summons for directions interlocutory proceedings. Be it as it is, paragraphs 25/7/1 and 25/7/2 of the White Book deal with the history and effect of the foregoing rule. Thus, the above paragraphs alluded to in the White Book are very instructive on the historical significance and essence of the rule. Paragraph 25/7/2 states:

> **The plaintiff on issuing the summons under r. 1, indicates his requirements. This rule provides a means for a defendant to indicate what will be his requirements at the hearing of the summons and for any party, in the event of an adjournment, to indicate to all other parties what further direction he may desire to be given at the resumed hearing.**

The foregoing analysis of the rule clearly depicts its restrictive applicability as pontificated above. This Honourable Court cannot therefore be hoodwinked by the somewhat oversimplistic (misleading) interpretation of the rules by the Defendants/Contemnors' Counsel. Nonetheless, the next point that should be discerned in this ruling is whether applications for contempt proceedings are bound to be made, pursuant to the summons for directions for the bundle to be restored. This is indeed the principal thrust of this ruling. Thus, it again logically procedurally follows that contempt proceedings are separate and distinctive proceedings that do not have anything to do with the provisions in Rule 6 of Order 28 of The HCR 2007. So, it is procedurally wrong for such proceedings to be begun, pursuant to

the summons for directions. The question that arises at this stage is whether the correct procedure was invoked by the Plaintiff/Applicant's Counsel to commence the contempt proceedings. Thus, Order 51 is very much instructive on issues of contempt proceedings.

The order generically concerns committal for contempt of court. This is also the essence of Rule 1(1). The subrule encompasses the power of the Court to punish for contempt of court by a committal order. Subrule (2) affirms the position that an order of committal may be made by the Court where contempt of court- (a) is committed in connection with – (i) any proceedings before the Court; (ii) criminal proceedings (iii) proceedings in an inferior court; (b) is committed in the face of the Court, or consist of disobedience to an order of the Court or a breach of undertaking to the Court; or (c) is committed otherwise than in connection with any proceedings. Rule 2 deals with the application to the Court. That is, how the application is made. Thus, the application is made by a notice of motion, stating the grounds of the application and supported by an affidavit (see subrule 1). Subrule 2 states that the notice of motion and affidavit are to be personally served on the person sought to be committed, but the Court may dispense with personal service where the justice of the case so demands.

Significantly, even in circumstances wherein committal applications are not made to it, the Court can of its own motion make committal orders against persons guilty of contempt of court (see subrule 3). Rule 4 touches and concerns the exceptional circumstances in which applications for contempt can be heard in chambers, but the general rule is that contempt applications are heard in open court. Such circumstances include (a) applications arising out of proceedings relating to the

wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant or rights or right of access to an infant; (b) applications arising out of proceedings relating to persons suffering or appearing to be suffering from mental disorder; (c) applications arising out of proceedings in which a secret process, discovery or invention was in issue; (d) instances that appear to the Court that in the interest of the administration of justice or for reasons of national security the application should be heard in Chambers.

Rule 4 (2) encapsulates instances in which the Court is obliged to make certain facts known in the situations contemplated in paragraphs (a), (b), (c) and (d) of Subrule (1) of Rule 4, wherein it has made committal orders against certain persons for contempt in chambers. The relevant facts that are to be made known include (a) the names of persons that are being committed for contempt; (b) the nature of the contempt of court in respect of which the order of committal is being made; (c) if he is being committed for a fixed period, the length of that period. At the committal proceedings, it is only the grounds set out on the face of the notice of motion that the applicant's counsel is obliged to address the Court on. However, with leave of the Court, any other relevant fact can be raised during the proceedings (see Rule 4 (4)). Thus, at the hearing, should the alleged contemnor express the desire to adduce oral evidence, it is his right to do so (see Rule 4 (5)).

Meanwhile, the Court may on its own volition, direct that orders of committal shall be suspended for such periods or on such terms or conditions as it may specify. Essentially, when the Court does this, the applicant shall, serve on the persons against whom the committal orders were made, a notice informing them about the order and their terms and conditions (see Rule 6 (1) and (2)). Again, according to

Rule 7 (1), the Court may, on applications of persons committed to prison for any contempt of court, discharge them. Thus, when persons are committed for failing to comply with orders and judgments, requiring them to deliver certain items to some other persons or to deposit them in court or elsewhere, and a writ of sequestration has also been issued to enforce such orders or judgments, then if such items are in the custody or power of the persons committed, the Sheriff may take possession of them as if they were the items of such persons, the Court may discharge the persons committed and may give such directions for dealing with the items taken by the Sheriff as it thinks fit (see Rule 7 (2)).

Finally, the Court may make orders requiring persons guilty of contempt of court, or persons punishable by any enactment in like manner as if they had been guilty of contempt of court to pay fines or give security for cost, for their good behaviour, and those provisions so far as applicable, and with necessary modifications, shall apply in relation to applications for committal orders. Thus, this Honourable Court's construction of the entire Order 51, establishes one pertinent fact, regarding whether the Plaintiff/Applicant's notice of motion of 23rd March 2022, should be heard and the preliminary objection repudiated. That sacred fact is that the said notice of motion is carefully constructed and has been properly placed before this Honourable Court of Justice; it is not in any shape or form prepared in contradistinction to the rules, and is therefore conscionable and procedurally congruent, to be heard. I shall dismiss the preliminary objection; though convoluted, but with no cost; because of the ingenuity with which it is argued.

The Hon. Justice Dr. Abou B.M. Binneh-Kamara, J.

Justice of Sierra Leone's Superior Court of Judicature.