

BETWEEN:

MR. FODAY TURAY - PLAINTIFF  
30<sup>F</sup> OLD RAILWAY LINE  
WILBERFORCE  
FREETOWN.

AND

GUOJI PROPERTY DEVELOPMENT - DEFENDANT  
(SIERRA LEONE LIMITED)  
FORMER NATIONAL WORKSHOP COMPOUND  
CLINE TOWN  
FREETOWN.

**BEFORE THE HON. MR. JUSTICE JOHN BOSCO ALLIEU, J.A.****RULING DATED THE 20<sup>th</sup> DAY OF April 2021**

REPRESENTATIONS:

M.P. FOFANAH ESQ - FOR THE PLAINTIFF  
J. K. LANSANA ESQ - FOR THE DEFENDANT

**RULING****I**

The Notice of Motion dated 3<sup>rd</sup> June 2019 sought to be moved by Counsel for the Defendant was objected to by Counsel for the Plaintiff, M.P. Fofanah Esq. on the following grounds;

- (a) That it will be highly prejudicial to allow the Application and that it will cause grave injustice to the interest of the Plaintiff in view of the fact that Pleadings have long closed, trial had commenced, witnesses had been led in evidence and cross examined and both parties have closed their case awaiting this file to the withdrawn for Judgement.
- (b) That the real question in controversy between the parties have been fully dealt with and addressed during trial and that the Application is designed to reopen the case after it had been closed.

The Application is an attempt to deal with the issues which the Court had already dealt with in a different manner which is not the intention of Order 23 Rule 7(1) and Rule 5 respectively of the High Court Rules 2007.

- (c) That the real question in controversy between the parties have been settled by the trial and this Application is all but an attempt to cause mischief in this trial because gave injustice to the Plaintiff will be prejudicial and a waste of the Court's time in view of the long period in waiting for this trial. He urged this Hon. Court not to hear this Application and to withdraw this matter for Judgement.

## II

In his response, Counsel for the Defendant, J.K. Lansana Esq. submitted that the rule relating to amendment, that is, Order 23 of the High Court Rules 2007 permits this Hon. Court to grant amendment at any stage of the proceedings. The intention of the drafters of the Legislation meant for amendment to be effected from start to finish.

He further submitted that no particular or other mode of construction or interpretation at this stage was elaborated upon by the statute. The intention of the Law Makers was to give the Court the liberty to do their Constitutional mandate.

He referred that Counsel for the Plaintiff spoke about injustice and submitted that the discretion of this Hon. Court to hear and grant the Application will not amount to injustice. It is not the whole pleadings, that is sought to be amended but only a minute area which will not attempt to do mischief to the Plaintiff or to legally assault their evidence in this Hon. Court.

He invited this Hon. Court to entertain his Application in order that the ends of Justice shall be met in favour of both parties in this action.

In his reply, Counsel for the Plaintiff, M.P. Fofanah Esq relied on his submissions which he had earlier made.

## III

I am to consider objections raised touching and concerning the application of Order 23 Rule 5(1) and 7(1) respectively of the High Court Rules 2007. The overriding principles with regard to amendments under the abovementioned Order is that generally speaking, all amendment will be allowed at any stage of the proceedings and of any document in the proceedings on such terms as to costs or otherwise as the Court thinks just.

Accordingly, as a general rule, either party in the proceedings is allowed to make any amendment in his own pleadings or other proceedings which is reasonably necessary for the due presentation of his case on payment of the costs of and occasioned by the amendment, PROVIDED THERE HAS BEEN NO UNDUE DELAY ON HIS PART [Emphasis Mine]. If the proposed amendment is sought to be made after undue delay, LEAVE TO AMEND WILL BE REFUSED [Emphasis Mine].

In *Hipgrave Vs. Case* (1885) 28 Ch. D. 356 at 361, it is stated that the Court will not readily allow at the trial an amendment, the necessity for which was abundantly apparent months ago, and then not asked for.

A slight delay is not a sufficient ground for refusing leave. However, in the case of *James Vs. Smith* (1891) 1 Ch. 384, it is stated that if an Application for amendment which could easily have been made at a much earlier stage of the proceedings be delayed till after evidence given and a point of law argued, leave may be refused. See also *Clark Vs. Wray* (1886) 31 Ch. D. 68.

In the instant case, the Writ of Summons was issued out of the High Court Registry on 10<sup>th</sup> October 2013 to which a Defence and Counterclaim was filed on 29<sup>th</sup> April 2015 by Wright & Co., Solicitors. The

present Counsel for the Defendant, J.K. Lansana Esq., filed a Memorandum and Notice of Appointment of Solicitor on 14<sup>th</sup> July 2017.

Evidence was heard in this matter from Tuesday 27<sup>th</sup> June 2017 to Tuesday 5<sup>th</sup> February 2019 in which the Plaintiff and Defence witnesses have all testified and cross examined, now with Judgment on the verge to be delivered. That notwithstanding, Counsel for the Defendant attached a Proposed Amended Defence to his Application indicating the year 2019. On Tuesday 11<sup>th</sup> July 2019, Counsel for the Defendant, in his Motion filed dated 3<sup>rd</sup> June 2019, sought to obtain leave from this Hon. Court to amend his Defence and Counter claim, the same which had been filed by the erstwhile solicitors on 29<sup>th</sup> April 2015. In effect, a period of 2 (two) years had elapsed in which Counsel for the Defendant failed to make an Application for an amendment of his Defence, the period been from 14<sup>th</sup> July 2017, when he filed in the Memorandum and Notice of Appearance to 11<sup>th</sup> July 2019, when he sought to move this Hon. Court for the said amendment to be granted.

It is therefore my considered view that with reference to the aforementioned, Counsel for the Defendant has occasioned undue Delay in making his Application for an amendment of his Defence and as a result such an amendment sought will be refused.

In view of the foregoing, the objections raised by Counsel for the Plaintiff, M.P. Fofanah Esq., are hereby upheld and the reliefs sought in the Application dated 3<sup>rd</sup> June 2019 are hereby refused with costs awarded against the said Defendant in the sum of Le5,000,000/00 (Five Million Leones).



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**HON. MR. JUSTICE JOHN BOSCO ALLIEU J.A.**