

IN THE HIGH COURT OF SIERRA LEONE**(GENERAL CIVIL DIVISION)****BETWEEN:****MR. SAHR LAHAI - PLAINTIFFS/RESPONDENTS****BALLOW****AND****AGATHA BAXTER - DEFENDANT/APPLICANT****M.N. Bittar Esq. for the Defendant/Applicant****E. T. Koroma Esq. for the Plaintiffs/Respondents****RULING DELIVERED THIS 15th DAY OF JUNE 2022 BY HONOURABLE MRS. JUSTICE JAMESINA E. L. KING J.A**

1. The Defendant/ Applicant by Notice of Motion dated 16th July 2021 applied for an order that the Writ of Summons dated 25th day of June 2021 and all subsequent proceedings if any thereto, be set aside ex debito justitiae, on the ground that the Plaintiffs did not comply with Order 6 Rule 3 of the High Court Rules 2007 by filing a specially indorsed writ in place of a generally indorsed writ, and subsequently a statement of claim wherein they have alleged malicious prosecution.
2. The said Notice of Motion was supported by the affidavit of Bernard Eldred Jones sworn to on 16th July 2021 together with the exhibits attached to it. The Plaintiffs' claim against the Defendant is for general damages for malicious prosecution, special damages in the sum of Le30,000,000, damages for unlawful detention and costs. The Defendant filed an appearance to the claim.
3. The Defendant/Applicant's Counsel made submissions to the Court that the Plaintiffs failed to comply with Order 6 Rule 3 of the High Court Rules. He referred to the said action in the Writ against the Defendant, which is for malicious prosecution. He stated that the said Rule provides that for such actions a generally indorsed writ should be filed and not a specially indorsed Writ which the Plaintiffs have done.
4. Counsel for the Plaintiff/Respondent submitted that the application lacked merits and is misconceived submitting that Order 6 rule 3 is optional and not mandatory. He stated that it is entirely within the purview of the Plaintiffs to select whether they will come by a specially or generally indorsed Writ. He further stated that the application should

- be struck out. He submitted that assuming without conceding to the said application, he relied on Order 2 Rule 1 of the said Rules which cures the situation notwithstanding the non-compliance, as it does not nullify the proceeding but is to be treated as irregular as the merits of the action should not be affected by mere technicalities.
5. Order 6 Rule 3 sets out a list of actions in which the Plaintiff may issue a Writ of Summons specially indorsed with or accompanied by a statement of claim. In such cases the Plaintiff has the option of issuing a specially indorsed writ. Of relevance to this application, Order 6 Rule 3 (g) in particular clearly states that for certain actions such as malicious prosecutions, as is the claim in this case, the Plaintiffs do not have the option to issue a writ that is specially indorsed.
 6. In the present case therefore, the Plaintiffs ought to have issued a generally indorsed writ without indorsing it with the statement of claim. The Plaintiffs Writ is specially indorsed as it includes the statement of claim and this does not comply with the said Rule.
 7. The issue now is could the Plaintiffs' non-compliance with Order 6 be remedied by Order 2 Rule 1 of the said Rules which states that failure to comply with the requirement of the Rules shall be treated as an irregularity and shall not nullify the proceedings.
 8. It is not in every case that breach of the Rules can be cured by ~~the~~ Order 2 Rule 1 as some breaches are so fundamental, as the form of a writ for instituting certain actions. Whilst in most actions a Plaintiff has the option to decide whether to institute a specially indorsed writ or a generally indorsed writ this choice or option is not open to the Plaintiff in certain specific actions listed in Order 6 Rule 3(g), and malicious prosecution is one of them. If Order 6 Rule 3 (g) states that you cannot issue a specially indorsed writ in such cases such as malicious prosecution, then the only Writ that can be issued is a generally indorsed writ.
 9. The question is what is a generally indorsed writ ^{as} and distinct from a specially indorsed writ? A generally indorsed writ contains a concise statement of the nature of the claim made or the relief or remedy required. It is not indorsed with the statement of claim. When a generally indorsed writ is issued, the statement of claim with detailed particulars is filed and served separately after the Writ and it is only then that the Defendant is expected to file a defence to the claim.
 10. The exceptions to filing a specially indorsed Writ as provided in O6R3(g) was part of the former High Court Rules of 1960. It is worthy to note that with the introduction of the 2007 Rules, these exceptions were still retained even though they no longer feature in the English Supreme Court Practice of 1999, the latter now allows the Plaintiff to file either a generally indorsed writ or a specially indorsed writ in any action.
 11. The manner and form of instituting proceedings specifically provided for in the Rules, in my view is so fundamental and cannot be waived, dismissed or cured by Order 2 Rule 1 of the High Court Rules. The Plaintiffs in seeking redress or remedy against the

Defendant for malicious prosecution, they must follow the procedures laid down in the Rules and they are still at liberty to do so.

12. In view of the above I make the following orders:

1. The Defendant/Applicant's application is granted and the Writ of Summons dated 25th day of June 2021 is set aside ex debito justitiae on the ground that the Plaintiffs did not comply with Order 6 Rule 3 of the High Court Rules 2007.
2. Costs of the application to the Defendant/Applicant to be taxed if not agreed.

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HON. MRS. JUSTICE JAMESINA E. L. KING J. A