

IN THE HIGH COURT OF SIERRA LEONE

(GENERAL DIVISION)

IN THE MATTER OF THE HUMAN RIGHTS DEFENDERS' NETWORK

SIERRA LEONE (HRDN) (SL)

AND

IN THE MATTER OF RESOLUTION 2020/001 OF THE HUMAN RIGHTS DEFENDERS NETWORK SIERRA
LEONE (HRDN) (SL)

BETWEEN

HUMAN RIGHTS DEFENDERS' NETWORK – PLAINTIFF/RESPONDENT

AND

MR. ALPHONSO B. M. GBANIE - DEFENDANT/APPLICANT

COUNSEL:

V. S. Nabie Esq. for Defendant/Applicant

A. M. Musa Esq. for Defendant/Respondent

**RULING DELIVERED THIS 26th DAY OF JANUARY 2022 BY HONOURABLE MRS. JUSTICE JAMESINA E.
L. KING J.A**

Background

1. By a Notice of Motion dated 8th February 2021 the Defendant/Applicant applied to the Court for the following orders:
That the purported Originating Summons dated 28th day of January 2021 be set aside and/ or struck out on the following grounds, to wit:
 1. That the aforesaid purported Originating Summons relates to a Division of the High Court of Sierra Leone which is not cognizable under the provisions of the High Court Rules 2007.
 2. That the said Originating Summons is not sealed by the Master & Registrar which said seal issues it from the Master' Office as required by law.
 3. That the purported Originating Summons refers to an Affidavit which is undated and/or the date is inchoate.
 4. That the purported Affidavit in support of the purported Originating Summons is sworn to on the 29th day of January 2021 whilst the Summons itself is dated the 28th day of January 2021.
 5. The aforesaid Affidavit does not contain the Miscellaneous Application Number of the Cause as well as the certificates of the exhibits relative thereto.

6. That the aforesaid Originating Summons does not seek the construction or interpretation of any Constitution, Statute or Instrument but merely recites "In the matter of the Human Rights Defenders' Network (S.L.) Limited" which does not relate to any Constitution, Statute or Instrument for a declaration or construction thereof.
 7. The Minutes of the Extra Ordinary Meeting of the Board of Directors is neither Certified True Copy thereof and the names of the so-called Directors are inscribed in ink and not signed by the so-called Directors.
 8. That there is no Resolution filed in the Corporate Affairs Commission that Sulaiman Jabati who purports to be Chairman, Board of Directors of Human Rights Defenders Network Sierra Leone and/or if there is any it is not a Certified True Copy thereof and has not been exhibited in the said Purported Affidavit.
 9. Any other Order(s) that this Honourable Court may deem fit and just.
 10. That the Costs of this Application be costs in the cause.
2. The said Notice of Motion was supported by the affidavit of Vandi Samuel Nabie sworn to on 8th February 2021 with several affidavits attached thereto and filed herein.

SUMMARY OF SUBMISSIONS BY COUNSEL FOR THE PARTIES

Submissions by Counsel for the Defendant/Applicant

3. Counsel for the Defendant/Applicant submitted that the Originating Summons was replete with a litany of errors some of them not curable under the High Court Rules 2007. Regarding Order 1 prayed for he referred to Order 4 Rule 1 of the said Rules and stated that General & Civil Division is not one of the divisions of the High Court. Regarding Order 2 prayed for he referred to Order 8 Ruled 4 (1) and (4) of the said Rules. He abandoned the 3rd Order sought. Regarding the 4th Order prayed for, he submitted that the affidavit had to predate the originating summons and it was not in existence at the time of the said summons.
4. Regarding Order 5 prayed for he relied on Order 4 Rule 1 of the said Rules. Regarding the 6th order sought that the Originating Summons does not seek construction of any statute instrument etc., he submitted that it is trite law that an Originating Summons must seek for interpretation or construction of an instrument, a deed and in this matter, the Plaintiffs did not come for any interpretation. He further submitted that the Plaintiff came for a cancellation of the appointment of the Defendant which is under a different ambit of the High Court Rules. In relation to the 7th and 8th Orders sought on the need for certified copies of the documents exhibited, he relied on the Registration of Instruments Act Cap. 256 of the Laws of Sierra Leone, Sections 9 & 15.

Summary of Submissions by Counsel for the Plaintiff/Respondent

5. Counsel for the Plaintiff/Respondent relied on his affidavit in opposition sworn to by Alex Mugbe Musa on 29th June 2021. He submitted that the objection regarding the 1st Order prayed for is diminimis and curable and relied on Order 2 Rule (1) (1) (2) & (3) of the said Rules. In relation to the 2nd Order, he submitted that it was the Master & Registrar's responsibility to seal the document and not his responsibility. Regarding

- the 4th Order sought he stated that it was not uncommon for the Summons to be done on the same day as the affidavit but it did not really matter if the affidavit is done after the date of the Originating Summons. Regarding the 5th Order sought he submitted that the Misc. App no in an action is indorsed by the office of the Master & Registrar.
6. In response to the 6th Order prayed for, Counsel submitted that he is in disagreement with the submissions of Counsel for the Defendant/Applicant and referred to paragraph 7 of his affidavit in opposition which I will set out later in this decision. He stated that to give force or effect is to interpret. He also referred to the 2nd Order sought in the Originating Summons which was for an interpretation and in effect he had rightly used an Originating Summons. Regarding Orders 7 & 8 sought, he submitted that he did not comprehend the objections as the minutes referred to is signed. On the issue that it is not a certified copy, he submitted that the fact that it is not certified does not negate the validity of the document. He also submitted that the resolution referred to had been filed with the Corporate Affairs Commission and referred to Exhibit SJ9 dated 8th January 2020.
 7. He concluded that the application for the action to be struck out on the grounds of those irregularities stated on the said Motion should not be countenanced as the provisions relied on have not been helpful as the said irregularities can be cured.

Summary of Response by Counsel for the Plaintiff

8. Counsel for the Defendant/Applicant in reply referred to Order 31 Rule 1 of the said Rules requiring every affidavit to be entitled in the cause or matter. He also submitted that the Originating Summons is not complete in the absence of a seal and Counsel cannot put the responsibility at the doorstep of the Master & Registrar stating that in the absence of a seal, it has not been issued and referred to Order 7 Rule 2(1) of the said Rules.

Analysis and Decision

9. The issue for determination is whether the Originating Summons should be struck out for the irregularities on the Notice of Motion as set out above. The irregularities are numerous and I do not wish to deal with all of them, majority of which I believe can be cured by the Rules with costs. A few of the irregularities complained of are of no moment and not worthy of this Court's determination at this stage.
10. This Court's decision will be focused on the irregularity contained in the 6th Order sought to the effect that the Originating Summons does not seek the construction or interpretation of any Constitution, Statute or Instrument but merely recites "In the matter of the Human Rights Defenders' Network (S.L.) Limited" which does not relate to any Constitution, Statute or Instrument for a declaration or construction thereof.
11. Responding to the 6th order sought, Counsel for the Plaintiff/Respondent referred to paragraph 7 of the affidavit in opposition of Alex Mugbe Musa sworn to on 29th June 2021 which states as follows:
"Counsel's claim in paragraph 6 of his Application, that asking the Court to give force or effect to a Resolution does not amount to an interpretation, is similarly misplaced. "Giving force or effect" is simply asking the Court to interpret the Resolution with due

regard to the Defendant's conduct of continuing to hold himself out as Executive Secretary of HRDN-SL after passing the Resolution dismissing him."

12. In the Originating Summons filed commencing this action the Plaintiff seeks this Court's determination of the following questions and prays for certain orders as follows:

"1. That this Honourable Court give force or effect to Resolution 2020/001 of the Human Rights Defenders Network Sierra Leone (HRDN-SL) dated 10th December 2019 to wit:

That after persistent failures to persuade the Executive Secretary Mr. Alphonso B.M. Gbanie, to work within the mandate and Memorandum and Articles of Association (M & A) of the Human Rights Defenders Network (SL) Ltd., and more importantly his (Mr. Gbanie's) failure to adhere to the directives of the CEO/Registrar of the Corporate Affairs Commission (CAC) given in letters dated 23rd October and 6th November 2019 respectively (attached);

Now therefore the Board of Directors of Human Rights Defenders Network (SL) Ltd., meeting on 9th January 2019 at Peace Museum, have resolved to summarily dismiss Mr. Alphonso B. M. Gbanie, as Secretary of the Human Rights Defenders Network (SL) Ltd effective 9th January 2020 and he is so dismissed and replaced him with Mr. Benjamin D. Kamara as Secretary.

2. That this Honourable Court declare whether the Defendant, an erstwhile Executive Secretary of HRDN-SL, can continue to withdraw funds belonging to HRDN-SL, existing in Zenith Bank Sierra Leone or any other Banks in Sierra Leone in the light of HRDN-SL Resolution 2020/001".

13. This action has been commenced by an originating summons. This mode of instituting an action does not require pleadings and is appropriate for cases where there is no substantial dispute on questions of facts. Order 5 of the High Court Rules provides for the mode of beginning civil proceedings in our courts and Rules 3 & 4 of that Order are instructive. Relevant provisions in Order 5 R 3 & 4 are as follows:

"3 (1) Proceedings by which an application is to be made to the Court or a judge under any enactment shall be begun by originating summons except where, by these Rules or by or under any enactment the application is expressly required or authorized to be made by some other means.

4(2) Proceedings:-

(a) in which the sole or principal question at issue is or is likely to be one of the construction of an enactment or of any deed, will, contract or other document or some other questions of law; or

(b) in which there is unlikely to be any substantial dispute of fact,

are appropriate to be begun by originating summons....."

14. I note from the affidavit in opposition that the Plaintiff has come for an interpretation and that "giving force or effect" to the aforesaid resolution is simply asking the Court to interpret it and presuppose that it has come by an originating summons pursuant to Order 5 Rule 4 (a) set out above. Is the originating summons asking for an

interpretation of the resolution? I also note that Order 5 Rule 4 (2) set out above use the word "construction".

15. In "A Dictionary of Modern Legal Usage" 2nd Edition by Bryan A. Garner, Oxford University Press at p. 462 dealing with the words "interpretation; construction" states as follows; -
"One has it that, although *interpretation* and *construction* are generally regarded as synonymous and used interchangeably, it is not only possible, but desirable as well, to draw a distinction. The word *interpretation* is used with respect to language itself; it is the process of applying the legal standard to expressions found in the agreement in order to determine their meaning. *Construction*, on the other hand, is used to determine, not the sense of the words or symbols, but the legal meaning of the entire contract; the word is rightly used wherever the import of the writing is made to depend upon a special sense imposed by law" 4 Samuel Williston, Treatise on the Law of Contracts s 602, at 320 (3d ed. 1961)...."
16. Having regard to the orders sought in the Originating Summons it is clear that the Court is called upon to enforce a resolution of the Board of the Plaintiff. Even though Counsel for the Plaintiff submits that it will have to interpret before enforcing, I note that the sole or principal question in the action is not one of construction or interpretation of the Plaintiff's Board of Directors resolution but goes beyond that. Furthermore, the order sought does not require the Court to interpret or construct as elucidated in the paragraph from Garner's Dictionary quoted above on interpretation and construction. The Plaintiff case therefore does not fall within the provision of Order 5 Rule 4 (2) (a) which provides that an originating summons is appropriate for cases where the sole or principal question at issue is or is likely to be one of construction of the resolution.
17. The next question I have to address is whether there is unlikely to be any substantial dispute of facts in this case for it to fall under Order 5 Rule 4(2) (b) and appropriate to commence by an originating summons.
18. In *Aiah Momoh v Sahr Nyandemoh* S. C. Civ. App, 6/2006 delivered on 9th June 2008 the action was instituted by an originating summons and there were disputes on the facts in that case. In delivering its decision, the Supreme Court said that where the issue between the parties is in controversy, pleadings must be ordered and if looking at the affidavit the matter is contentious the correct order is to order counsel to file pleadings.
19. In the affidavit filed in support of the Originating Summons, the deponent Sulaiman Jabati in certain paragraphs relevant to the determination of the current application states the following:
"4. Between 2017 and the first half of 2019, the Board of Directors observed some glaring malpractices by the Defendant in his dealing with the company.
13. That in consequence of the unremitting contemptuous conduct by the Defendant the Board of Directors of HRDN-SL summoned an Extraordinary meeting on the 10th December 2019 and resolved among others (i.e. Resolution 2020/001) that the Defendant be dismissed and be replaced by Mr. Benjamin D. Kamara. Exhibited is a copy of the said Resolution marked S.J.8

15. That by a letter dated 15th January 2020, the Board of Directors of HRDN-SL communicated the Summary dismissal decision pursuant to section 252 (1) of the Companies Act 2009 (As Amended) and relying on the Special Resolution of the Board of Directors dated 10th December 2019. Exhibited is a copy of the said letter dated 15th January 2020 marked S.J. 10

16. That despite the foregoing the Defendant still continues to hold himself out as Executive Secretary of HRDN-SL in blatant disregard for the decision of the Board.

17. That by letter dated 21st December 2020, the Plaintiff's Solicitors Alex Mugbe Musa & Co., warned the Defendant to desist from meddling with HRDN-SL affairs but this was received with disdain. Exhibited is a copy of the said letter marked SJ 11.

18. That the Plaintiff Solicitors have similarly informed the Zenith Bank to stop dealing with the Defendant in the light of the foregoing. Exhibited is a copy of the said letter marked S.J. 12.

19. That the best interest of Justice will be met if this Honourable Court grants the Orders prayed for in the Originating Summons filed herewith"

20. The said affidavit also referred to invitations extended to the Defendant to resolve the issues which were not honoured, and the orders prayed for in the said Originating Summons refer to persistent failures to persuade the Defendant, the said Executive Secretary to work within the mandate of the Plaintiff and his persistent failure to adhere to the directives of the CEO/Registrar of the Corporate Affairs Commission (CAC) given in letters dated 23rd October and 6th November 2019 respectively.
21. The Plaintiff in this matter is a limited company and is relying on a resolution relating to dismissal of the Defendant taken by the Board which it wants this Court to enforce as well as determine whether he can continue to withdraw HRDN-SL funds from Banks. There is definitely controversy between the parties, likely to involve dispute of facts which will be better resolved or determined by instituting a Writ of Summons against the Defendant and proceeding in that regard.
22. Having regard to the above, it is therefore my view that an originating summons is not the appropriate mode to begin this action and there is merit in the application by the Defendant to set aside and/or strike out the originating summons on ground 6 of the Notice of Motion dated 8th February 2021, i.e. that it does not seek the construction or interpretation of any constitution, statute or instrument.

In view of the foregoing, I make the following Orders:

1. The Defendant's application is granted and the Originating Summons dated 29th January 2020 is struck out.
2. Costs to the Defendant to be taxed if not agreed.

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