M·P·H·Sesay ESQ

IC. 13/13 **2015** **A.** **NO.2**

IN THE HIGH COURT OF SIERRAL LEONE
(INDUSTRIAL COURT DIVISION)
(TRADE DISPUTE)

BETWEEN:

MR. DANIEL C. ADAMS & THIRTY-NINE OTHERS - PLAINTIFFS/APPLICANTS
NO. 5 ONIEL STREET, FREETOWN

VIVIAN BELL
92 SOLIDER STREETS, FREETOWN
(JOINED AS "2ND PLAINTIFF" BY COURT ORDER DATED11TH MAY, 2016)

AND

THE MANAGING DIRECTOR - 1ST DEFENDANT/RESPONDENT
U. S.P & E/AFRICAN POWER & THE
ENVIRONMENT LUNSAR

TIMIS MINING CORPORATION - 2ND DEFENDANT/RESPONDENT
CAPE LAMBERT DRIVE, OFF WILKINSON ROAD
FREETOWN
(JOINED AS "2ND" DEFENDANT" BY COURT ORDER DATED 11TH MAY, 2016

BEFORE THE HON. MR. JUSTICE SENGU KOROMA – JSC
RULING DELIVERED DATED 26TH MARCH, 2019

RULING

BACKGROUND

1. The Plaintiffs/Applicants herein filed an application by way of Notice of Motion dated 23rd January, 2019 seeking inter alia, an Order relisting the Notice of Motion and Affidavit including exhibits attached dated 5th day of September, 2015 for hearing and determination on its merits.

2. The Plaintiffs/Applicants gave notice that at hearing of the application they will use and rely on the affidavit of Daniel C. Adams sworn to on the 23rd January, 2019 together with exhibits attached thereto and any other affidavit Counsel may seek to leave to use.

3. I must comment, with disapproval, on the Solicitor stating that the Applicant will use and rely on the affidavit of "Defendant/Applicant" when there is no such party in this action. Solicitors are expected to be diligent in drafting Court documents especially where they relate to the descriptions of parties.

HEARING.

4. The application came up for hearing on the 13th February, 2019. As soon as Pious Sesay Esq. made reference to the affidavit in support, Berthan Macauley (Jnr.) Esq., Counsel for the Defendant/Respondents took an objection to the use of paragraphs 27 and 28 of the said affidavit.

5. In support of the objection, Mr. Macauley referred this Court to Order 31 Rule 5 (2) of the High Court rules, 2007 and submitted that the application is in the nature of interlocutory proceedings and the Rules required that the source, belief and grounds ought to be stated. This was not done by the deponent. The said paragraphs

27 and 28 therefore offend Order 31 Rule (5) subrule 2 of the High Court Rules, 2007.

6. **MR. MACAULEY REFERRED THIS COURT TO THE CASE OF YOUNG-V-JLYOUNG MANUFACTURING COMPANY LIMITED (1896) ICLR (1900) C.A.**

7. In responses M.P Sesay (Snr.) Esq. Counsel for the Plaintiffs/Applicants submitted that the objection was not preliminary as it went to the Jurisdiction of the Court. He further submitted that an application under order 31 Rule 6 could have been more appropriate and since the said paragraphs 27 – 28 were not scandalous, irrelevant and above all oppressive, the said affidavit could be used. Mr. Sesay concluded that affidavit is regular and in compliance with Order 31 and does not offend Rule 6 thereof.

8. Mr. Macauley in reply clarified that their objection related to only paragraphs 27 and 28 and not to the entire affidavit and so the issue o jurisdiction did not arise.

9. The starting point in determining this objection is to state the averments in paragraphs 27 and 28.

10. Paragraph 27: That I am informed and verily believe that on the day of hearing our Solicitor spoke to his professional colleague on record and requested for an adjournment in the light of his state of health and I am informed that Learned Senior colleague gave him assurance for an adjournment.

11. Paragraph 28: That I am informed and verily believe that records Of proceedings show instances where our Solicitor adjourned due to the absence of his colleague; and declines to move his application.

12. It is not in dispute that the application herein is interlocutory. The general principle is that affidavits for use in interlocutory proceedings may contain statement of information and belief with the sources and grounds thereof. This is the import of Order 31 Rule 5 (2). However the principle governing this Order could be traced to Order 31 Rule 5 (1). This Rule requires that the affidavit must contain the evidence of the deponent as to such facts only as he is able to speak to of his own knowledge, and so to this extent, equating affidavit evidence to oral evidence given in Court –English Supreme Court Practice Paragraph 41/5/2.

13. The exception to this general principle is to be found in order 31 Rule 5 Subrule 2 which deals with depositing to hearsay evidence. In such a situation if the grounds are not identified, the affidavit is defective and the offending portions could be properly struck – off **– KAL MACOFF LTD V VEREGIN FLOUR MILLS (1939) 2 WWR 64 (CANADIAN).**

14. In the case of **RE JL YOUNG MANUFACTURING COMPANY LIMITED YOUNG V JL YOUNG MANUFACTURING COMPANY LIMITED** (cited by counsel for the Respondent, the objector herein) it was laid down as a rule of practice that an affidavit of information and belief not stating the source of the information or belief is irregular, and therefore inadmissible as evidence, whether on an interlocutory or a final application; to use such an affidavit will do so at his peril as to costs. Lord Alverstone C.J. had this to say`... I notice that in several instances, the deponents make submissions based on their information and belief" without stating what their source or information and belief is, and in many respects what they so state is not confirmed in any way. In my opinion, so – called evidence on information and belief ought not to be looked at, at all – unless the Court can ascertain the source of the information and belief but also unless the source of the information and belief is corroborated by someone who speaks

from his own knowledge". I adopt this dictum of the Lord Chief Justice taking into consideration the fact that though the case was decided in 1896; the principles governing the use of affidavits in interlocutory applications have not changed with successive Civil Procedure Rules.

15. I shall conclude by saying that the Applicants did not properly respond to the gravamen of the objection but rather relied on extraneous matters.

16. In the circumstance, as the deponent failed to provide the source, belief and grounds of the averments contained in paragraphs 27 and 28 of the affidavit, it is hereby ordered as follows:

    1. Paragraphs 27 and 28 of the affidavit of Daniel C. Adams sworn to on the 23rd January, 2019 are hereby struck out.
    2. Costs in the cause

HON. JUSTICE SENGU M KOROMA - JSC
PRESIDENT OF THE INDUSTRIAL COURT