

IN THE HIGH COURT OF SIERRA LEONE
(INDUSTRIAL AND SOCIAL SECURITY DIVISION)

BETWEEN:

MARIATU CONTEH

- PLAINTIFF/RESPONDENT

AND

SINGSONG MEDICAL CLINIC

- 1ST DEFENDANT/APPLICANT

DR. JOSEPH A. K. KAMARA

- 2ND DEFENDANT/APPLICANT

Bangura
Prepare 4
Copies
24/3/2020

COUNSEL:

C. Hotobah-During Esq. for the Plaintiff/Respondent

A.D. Camara-Macauley Esq. for the Defendants/Respondents

RULING DELIVERED THIS 18TH DAY OF MARCH 2020

1. The Plaintiff instituted a writ of summons against the Defendants on 3rd October 2019 for the recovery of Le14,445, 236 (Fourteen Million Four Hundred and Forty-Five Thousand Two Hundred and Thirty-Six Leones) being special damages in respect of a breach of contract of employment as a Medical Nurse and/or a debt due to the Plaintiff on the aforesaid contract, interest thereon and costs. An appearance was entered for the Defendants on 11th October 2019.
2. By Notice of Motion dated 25th October 2019 the Defendants/Applicants applied inter alia for the following orders:
 1. That this Honourable Court strikes out this action against the 1st Defendant on the basis that it lacks a corporate status to be sued.
 2. That this Honourable Court dismiss this action against the 2nd Defendant for lack of compliance with Section 35 (1) of the Regulation of Wages and Industrial Relations Act No.18 of 1971.
3. In support of the application is the affidavit of Joseph A. K. Kamara the 2nd Defendant, sworn to on 25th October 2019 with a number of exhibits attached thereto. He stated that the 1st Defendant is a business enterprise registered in Sierra Leone and has been informed by his Solicitors and verily believe that an action cannot be instituted against a sole proprietorship and in this case the 1st Defendant. He has also been informed by his Solicitor that the mater herein was not properly referred to the Industrial Court as provided for by relevant legislation. Responding to the claim in the

Writ, he stated that an agreement for payment was reached between the parties where the sum of Le12,000,000 was settled to be the final end of service benefits due and owing to the Plaintiff and he has paid the agreed sum.

4. There is an affidavit in opposition sworn to by Carl Hotobah-During on 7th November 2019 together with the exhibits attached thereto. In response to the assertions in the affidavit of the Defendants/Applicants, he stated that the 2nd Defendant has been named in the action and that the cited provisions of the Regulation of Wages and Industrial Relations Act has no application as this matter is not a trade dispute. He further made reference to the Sierra Leone Gazette dated 25th April 2019 giving notification of the establishment of the Industrial and Social Security Division of the High Court. He further stated that prior to the establishment of the Division the practice of the High Court for employment cases was for the Writs to be issued in the General Civil Division and thereafter assigned, where appropriate to the Industrial Court. He stated that the motion is entirely frivolous, completely without merit, a waste of the court's time and an abuse of the court process and must be dismissed with significant costs in favour of the Plaintiff/Respondent.
5. Responding to the Defendants/Applicants' position that an agreed amount had been paid to the Plaintiff, Mr. Hotobah-During stated that the agreement referred to by the Defendant does not contain the Plaintiff's signature and is consistent with the Plaintiff's denial of having knowledge of, or being a party to any such agreement. He exhibited a computation of the end of service benefits and other entitlement due the Plaintiff in the sum of Le21,445,236 (Twenty One Million, Four Hundred and Forty Five Thousand, Two Hundred and Thirty Six Leones).
6. Both counsel relied on the affidavits and made submissions; counsel for the Defendants/Applicants referred to A.O. Afolabi & Ors. v. Western Steel Works Limited & Ors. (2012) LPELR-9340 (SC), section 35 of the Companies Act 2009, Act No. 5 of 2009 and section 35(1) of the Regulation of Wages & Industrial Relations Act No. 18 of 1971 to support his application. Counsel for the Plaintiff/Respondent urged the court to dismiss the application and referred to section 34(1) of the Regulation of Wages and Industrial Relations Act and the Sierra Leone Gazette of 25th April 2019 which published the High Court Divisions Order 2019.
7. The issue for determination is firstly whether the 1st Defendant lacks a corporate status to be sued and secondly whether the matter should be dismissed because it does not comply with section 35(1) of the Regulation of Wages and Industrial Relations Act of 1971.
8. I have considered the submissions of both counsel and carefully read the affidavits and exhibits filed herein. On the first issue, it is not in dispute that the 1st Defendant is a registered business in Sierra Leone. The Certificate of Business Registration indicate that it is a sole proprietorship operating the business of health care services carried on at 20B Fergusson Street, Freetown. I note that there are two Defendants, the 1st Defendant is the business and the 2nd Defendant is Dr. Joseph A.K. Kamara. In his affidavit, Joseph A. K. Kamara confirms he is the sole proprietor of the 1st Defendant. The 2nd Defendant as the sole proprietor is the proper person to be sued. Both the business and the owner of the business have been sued to answer the Plaintiff's claim. In view of the fact that the 1st Defendant is not an incorporated body, it has no capacity to be sued.

9. On the second issue that the matter should be dismissed for non-compliance with section 35(1) of the Regulation of Wages and Industrial Relations Act, it is prudent to refer to the said provision which states as follows:

“35(1) Upon reference of a dispute by the Minister or a Trade Group Council, the Court shall, as soon as conveniently may be, order the parties to the dispute or their representative to attend at such time and place as the Court may require for the purpose of determining the dispute”

10. I will also refer to section 34(1) of the said Act which states as follows:

“34(1) There shall be established an Industrial Court for the settlement of trade disputes in accordance with the provisions of this Act, in this Part called “the Court”.

11. The question is whether this action was instituted pursuant to section 35(1) of Regulation of Wages and Industrial Relations Act of 197. Section 35(1) of the said Act set out above, provides the mode of instituting proceedings i.e. by reference of a dispute by the Minister or a Trade Group Council. The rules of procedure governing referred disputes to the Industrial Court established by the said Act is regulated by the High Court (Industrial Court Division) (Procedure) Rules 2000, Statutory Instrument No.15 of 2000. Rule 5 specifies the details and form of a reference of a dispute by the Minister or Trade Group Council and Rule 6(1) provides that upon receiving a reference the Registrar shall prepare a summons in Form 1 prescribed in the Schedule and shall attach thereto a copy of the reference. Even though the aforesaid Rules are an adaption of the Rules of the High Court, it is abundantly clear that the mode of instituting and regulating proceedings in the Industrial Court is quite separate and distinct from those applicable to other actions. This action was instituted by a Writ of Summons distinct from a summons in Form 1 and there is no evidence that it is a dispute referred by the Minister of Labour or a Trade Group Council. In consequence of the above, the action herein is not instituted under section 35(1) of the Regulation of Wages and Industrial Relations Act.

12. Section 131 (3) of the Constitution of 1991 Act No. 6 of 1991 provides that the High Court shall have such Divisions consisting of such number of Judges respectively as may be assigned thereto by the Chief Justice. The Industrial Court Division of the High Court was established and constituted in Rules 2 and 3 of the High Court (Industrial Court Division) (Procedure) Rules, 2000.

13. This court takes judicial notice of recent legislation published on the 4th April 2019 relevant to this application and action which is the “The High Court (Divisions) Order, 2019”, Constitutional Instrument No.4 of 2019 which states that the High Court shall comprise of eight (8) divisions and one of the division is the “**Industrial and Social Security Division**”. Order 2 provides that a division shall hear and determine the matters set out in the Schedule. Section 3 of the Schedule lists out the matters the Industrial and Social Security Division shall hear and determine which are as follows:

- “ (a) labour, industrial relations and social security;
- (b) industrial disputes;
- (c) **employer and employee relationships**; (emphasis mine)
- (d) trade disputes referred to it by the Ministry responsible for labour or a trade group council;

- (e) failure to pay the National Social Security and Insurance Scheme contributions
- (f) application or interpretation of the provisions contained in the National Social Security and Insurance Trust Act, 2001;
- (g) failure to register an establishment for social security purposes pursuant to subsection (2) of section 35 of the National Social Security and Insurance Trust Act, 2001;
- (h) execution of an order pursuant to section 35 of the National Social Security and Insurance Trust Act, 2001;
- (i) application for the sale of property of an employer so as to recover debt owing to the National Social Security and Insurance Trust Act, 2001;
- (k) any other application for the recovery of debt owing as contribution or penalty through garnishee proceedings; and
- (l) any other matter relating to industrial and social security issues".

14. I note that the action herein was instituted in the Industrial and Social Security Division as specifically stated on the face of the writ of summons which is distinct from a summons under section 35(1) of the said Act as discussed earlier. As can be seen in (c) highlighted above, this Division can hear matters relating to employer and employee relationships such as this current action. The Plaintiff therefore correctly instituted the matter in the "Industrial and Social Security Division" of the High Court as stated in the Writ of Summons.

15. It is also important to note that matters relating to industrial relations and industrial disputes are also part of the new Division. However the Industrial Court is still in existence and functional as provided under the Regulation of Wages and Industrial Relations Act, with its distinct mode of instituting proceedings as well as its rules of procedure applicable to it. All other matters in the Industrial and Social Security Division is instituted by a Writ of Summons or any other mode of instituting actions in accordance with the High Court Rules, 2007 except otherwise stated by any other applicable legislation.

16. Having regard to the above, IT IS HEREBY ORDERED AS FOLLOWS:

1. The action against the 1st Defendant is struck out on the ground that it lacks a corporate status to be sued.
2. The application to dismiss the action against the 2nd Defendant is refused.
3. Costs of the application is costs in the cause.

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