

I.S.S. 63/20

2020 O NO. 2
IN THE HIGH COURT OF SIERRA LEONE
(INDUSTRIAL AND SOCIAL SECURITY DIVISION)

BETWEEN:

FRANKLIN O'NIEL &
69 OTHERS

- PLAINTIFF/RESPONDENT

AND

KINGS PRODUCTION (SL) LTD.
20 AFRICANUS ROAD
FREETOWN.

DEFENDANT/ APPLICANT.

COUNSEL:

Editayo Paps-Garnon Esq. for the Defendant / Applicant
Michael S Charles Esq. for the Plaintiff / Respondent

RULING DELIVERED ON THE 1ST DAY OF JULY 2021 BY HON. MR. JUSTICE
SENGU M KOROMA JSC. (President of the Industrial and Social Security Division)

1. This is an application by way of Notice of Motion dated the 7th day of October, 2021 praying for the following Orders:
 - (1). That the Writ of summons in this action be struck off for violating the express provisions of Rule 5 of Statutory Instrument, No. 15 of 2000 which provides for the commencement of Trade Disputes before the Industrial Court
 - (2). That the Writ of Summons in this action be struck off for violating the express provisions of Order 6 Rule 1 of the High Court rules, 2007 which provides for the address of the Plaintiff(s) be indorscd on the Writ of Summons..
 - (3). That the Writ of Summons be struck off as displaying no reasonable cause of action.
 - (4). That the Writ of Summons in this action be struck off for disclosing no reasonable cause of action against the 2nd Defendant.
 - (5) In alternative to order (2) above that the 2nd Defendant be struck off as an unnecessary party to the action and that the 1st Defendant be granted leave to defend the action alone.
 - (6) Any further or other orders

- (7) Costs.
2. At hearing of the Application and in support thereof, the Applicant uses the affidavit of Edward Solomon sworn to on the 7th day of October 2020.
 4. The Respondent opposes the Application and relies on the affidavit of Franklyn O.A. O'Neil sworn to on the 21st day of October 2020.

BACKGROUND

5. Mr. Michael Charles of Sangarie Law firm issued a Writ of Summons on behalf of the Plaintiffs herein seeking the following relief:
 1. Recovery of the sum of Le1,926,620,191 being overtime payment due the Plaintiffs pursuant to Article 15 and 16 of the Collective Bargaining Agreement of Gazette o. 24 Vol. CXL of 3rd June, 2009.
 2. Interest on the said sum pursuant to Section 4 of the Law reform (Miscellaneous Provisions) Act, Cap 19 of the Laws of Sierra Leone, 1960.
 3. Damages for breach of contract
 4. Any further Order (s) or reliefs that this Honourable Court may deem fit and just.
6. The firm of Lambert and Partners entered Appearance for and on behalf of the 1st and 2nd Defendants herein on the 5th August 2020.
7. The Defendants did not file a defence and instead took out a Notice of Motion dated 7th October 2020 seeking the Orders hereinbefore referred to.

THE HEARING

8. At the hearing of the Application, the Applicant was represented by E. Paps-Garnon Esq. and M. Charles Esq. represented the Respondents.

SUBMISSIONS OF COUNSEL FOR THE APPLICANT

9. E. Paps-Garnon Esq relies on the entirety of the affidavit of Edward Solomon sworn to on the 7th day of October 2020 together with various exhibits. He refers to another affidavit sworn to by Editayo Paps-Garnon on the 16th November 2020 in response to the affidavit in opposition
10. In his oral submission, E. Paps-Garnon Esq starts by referring specifically to Exhibit ES9 – “Report of payment made to 96 Retirees in your (see Defendants) employment”. This submission is predicated on paragraphs 5-9 of the Affidavit of Edward Solomon.
11. On the second order prayed for, Mr. Paps-Garnon contends that it violates Order 6 rule 5 of the High Court Rules, 2007. In further support of his submission, he refers to the white Book at page 46 under the rubric “ADDRESS OF THE PLAINTIFF”. The addresses of the Plaintiffs ought to have been indorsed on the Writ of Summons

12. With respect to the third order prayed for, Paps-Garnon Esq. submits that there is no reasonable cause of action as any claim they may have, if any, has been compromised. He refers this Court to BLACKSTONE LAW DICTIONARY (6th Edition) under the rubric "SETTLEMENT AND COMPROMISE". In support of this, Paps-Garnon Esq. refers to Exhibit E S 6-8. The effect of these exhibits, which are receipts signed by the Plaintiffs acknowledging payment made, estops them from making the present claims. In support of this, he refers further to HALSBURY 3rd Edition, Vol. 3, page 735 under the rubric "Receipts".

SUBMISSIONS OF COUNSEL FOR THE RESPONDENT

13. Michael Charles Esq. in his response submits that nothing precludes the Plaintiffs from coming to this Court by Writ of Summons, which is why they did not make a complaint at the Ministry of Labour and Social Security as required by Statutory Instrument No. 15 2000 but rather approached this Court by virtue of Constitutional Instrument No. 4 of 2019. He argues that Constitutional Instrument No. 4 of 2019 is the newer Instrument and so in any conflict between it and Statutory Instrument No. 15 of 2000, the former should prevail.

14. Michael Charles Esq. argues further that the Ministry of Labour neither is a Court nor are they arbitrators as their functions are limited to fixing of working conditions. It is for this reason that he, on behalf of his Clients, invoked the general jurisdiction of the High Court. He argues that if the Ministry refuses to act, a party has the right to invoke the jurisdiction of this Court by virtue of Section 132 (2) of the Constitution of Sierra Leone, Act No. 6 of 1991.

15. Michael Charles Esq. invites this Court to take cognisance of Constitutional Instrument No. 4 of 2019, which provides as follows:

"The Division shall hear and determine matters stated in the schedule"; the present matter falls within Section 3 thereof. In support of this submission, he cites the case of MARIATU CONTEH V SING SONG MEDICAL CLINIC AND JOSEPH A CONTEH (Unreported) Judgment delivered on the 18th March, 2020 – (King J.A) (ISS 55/19).

16. On the issue raised by Mr. Paps-Garnon regarding indorsement of the addresses of the Plaintiff, Mr. Charles argues that there is an address, which is "all of Freetown". He argues further that assuming without admitting that Mr. Paps-Garnon's contention is true, the said omission can only amount to deminimis, which can be amended by Order 2 of the High Court Rules 2007.

17. On the issue of the inclusion of the 2nd Defendant as a party, Mr. Charles concedes to his learned Friends submission that only the 1st Defendant should have been brought in as a Defendant.

18. Mr. Paps-Garnon in reply submits that this Court lacks jurisdiction to entertain this matter as it violates the originating procedure set out in the HIGH COURT (INDUSTRIAL DIVISION) Rules, 2000.

19. In view of the concession made by Mr. Charles regarding the inclusion of the 2nd Defendant as a Party, this Court accordingly struck-off his name as a Defendant.

ISSUE FOR DETERMINATION:

20. This Court has been approached by the Applicant to determine, as a preliminary issue, whether this Court has jurisdiction to entertain the Writ of Summons filed in this action. Mr. Paps-Garnon for the Applicant relies almost entirely on the provisions of the High Court (Industrial Court Division) Rules, 2000 in support of the main order prayed for in his Application, which is, "That the Writ of Summons in this action be struck off for violating the express provisions of Rule 5 of Statutory Instrument No. 15 of 2000..."

21. Mr. Charles on the other hand relies mainly on the Judgment of Hon. Mrs. Justice J.E.L. King – J.A. in the MARIATU CONTEH matter.

ANALYSES

22. Rules 5 of S.I. no. 15 of 2000 should not be read in isolation. It intended to give effect to Section 34 (1) and Section 35 (1) of the Regulation of Wages and Industrial Relations Act, No. 18 of 1975.

- (i) Section 34 (1) provides that "There shall be established an Industrial Court for the Settlement of trade disputes in accordance with the provisions of this Court".
- (ii) Section 35 (1): "Upon reference of a dispute by the Minister or 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 place as the Court may require for the purpose of determining the dispute".

23. There is an important qualification here, which tends to confuse various legal actors, to wit: that matters commenced under Act No. 18 of 1971 and the Rules under S.I No. 15 of 2000 must relate to only Employees below Supervisory level. This has been the law and practice. Constitution Instrument No. 4 of 2019, order 2 thereof, merely gave effect to the provisions of Act No. 18 of 1971 and Section 132 (2) of Act No. 6 of 1991 as far as it relates to that aspect.

24. I have read the MARIATU CONTEH Case referred to by Counsel for the Respondent and will say with respect that Constitutional Instrument No. 4 of 2019 never intended to

give litigants choice of whether to approach the Ministry of Labour or the High Court. It merely lists the types of matters to be determined by the industrial and Social Security Division. One needs to look further and determine where to commence action, for example, though schedule 3 provides that the "jurisdiction of the Division extends to failure to pay the National Social security and Insurance Trust contributions", matters relating to this are determined in the Magistrates' Court by virtue of the National Social security and Insurance Trust Act, No.5 of 2001. Similarly, whilst C.I. No. 4 states that the High Court has jurisdiction in Employer and Employee matters, reference should be made to the parent Act, on Regulation of Wages and Industrial Relations in Sierra Leone (which Act No.18 of 1971) to determine the extent of that jurisdiction.

25. For emphasis, if an employee is below Supervisory level, his point of call to settle any employer – employee grievance is the Ministry of labour and Social Security where conciliation meeting (s) will be held. This is standard practice in Industrial matters. "Conciliation" it should be understood is a form of Alternative Dispute Resolution.

26. The Counsel for the Respondent was therefore wrong to contend that there is no requirement to seek redress at the Ministry. It is worthy to note that when the conciliation fails at the Ministry, the matter will be referred to the Industrial Court for adjudication.

26. In the instant case, the Plaintiffs commenced their action at the MLSS and their end of service benefits were paid. There was also a compromise in respect of backlog wages increase and overtime. It is only when the Plaintiffs were wrongly advised that they could receive more that they sought redress in the High Court through an Originating process. This is an abuse of process for which I hold the Plaintiff Solicitor, Michael Charles Esq. solely responsible. Misleading and poorly researched legal advice has the tenancy to undermine the quality of justice and create confusion. Lawyers owe a professional duty to their clients and the Court. Mr. Charles's fanciful submissions are infuriating to say the least.

CONCLUSION

27. It is my conclusion that the Writ of Summons is frivolous and wholly without merit. The Ministry of Labour and Social Security has conciliated the complaint of the Plaintiffs, payments have been made thereunder and therefore did not consider necessary sending it to the Industrial Court.

28. Had it not been that, as a matter of principle, litigants should not be made to suffer for the negligence of their Solicitors, I should have ordered substantial costs against the Plaintiffs. The action of their lawyer has the tendency to set a dangerous precedent.

29. In view of this and in order to serve as a warning to Counsel against filing frivolous and totally unmeritorious actions, I shall in the exercise of my inherent jurisdiction order the Respondent's Solicitor/ Counsel to personally pay costs.

30. In the circumstance, I hold as follows:

1. That the Writ of Summons, intituled 63/20 No. 2 BETWEEN: FRANKLYN A. ONIEL -V- KINGS PRODUCTION (SL) LIMITED is and all subsequent proceedings are hereby dismissed on the ground that the Industrial and Social Security Division of the High Court has no jurisdiction to entertain it.
2. That the Solicitor/Counsel for the Respondent personally pay costs of Le.5, 000,000.00.



Hon. Mr. Justice Sengu .M. Koroma JSC

PRESIDENT OF THE INDUSTRIAL AND SOCIAL SECURITY DIVISION.