

IN THE SUPREME COURT OF SIERRA LEONE

SC. CIV APPEAL NO. 2 OF 1978

BETWEEN:

GBASSAY KAMARA - APPELLANT

Vs.

SALLAY WALLACE - RESPONDENT

CORAM:

Hon. Justice E. Livesey Luke - C. J.

Hon. Justice C. A. Harding - J. S. C.

Hon. Justice O. B. R. Tejan - J. S. C.

Hon. Justice A. V. A. Awunor-Renner - J. S. C.

Hon. Justice K. E. O. During - J. S. C.

JUDGMENT DELIVERED THIS 18<sup>TH</sup> DAY OF FEBRUARY, 1980

HARDING: J. S. C. :

\_\_\_\_\_ This appeal came up for hearing as a result of a special leave having been granted by this Court to the appellant on 3<sup>rd</sup> May, 1978. The events leading up to it are as follows:-

On 12<sup>th</sup> April, 1976, Sallay Wallace (hereinafter referred to as the Respondent) took out a Writ of Summons against Gbassay Kamara ( the appellant herein) claiming

- (i) a declaration that she is entitled in fee simple absolute in possession of a certain piece or parcel of land situate at Matilda Taylor Farm via Newton described on survey plan L. S. 1369/73 enclosing an area of some 16. 8941 acres;
- (ii) possession of the said land;
- (iii) damages for trespass;
- (iv) mesne profits from 1965 up to the date of delivery of possession;
- (v) an injunction to restrain the appellant, his servants or agents from entering or continuing in occupation of the said land.

On 1st May, 1976, Conditional Appearance was entered on behalf of the appellant without prejudice to an application being made within 10 days to set aside the service of the Writ; no such application was ever made and so the Appearance became Unconditional. On 4<sup>th</sup> May, 1976, the respondent's solicitor delivered and filed a statement of claim, to which the appellant's solicitor delivered a Defence and Counterclaim on 1<sup>st</sup> June, 1976. A Reply and Defence to the Counterclaim was delivered and filed on 8<sup>th</sup> June, 1976.

On 17<sup>th</sup> June, 1976, the respondent's solicitor gave notice of trial in the following manner:

“Take Notice that the above action has this day been entered for Trial. And that the same will be heard at the Court Hall, Law Courts Building Siaka Stevens Street, Freetown on Tuesday the 29<sup>th</sup> day of June, 1976 at 9 O'clock in the forenoon.

The trial is likely to last for 2 days.

Dated 17<sup>th</sup> day of June, 1976.”

On the same date the matter came up for trial as follows:-

“Enter this section for trial

Dated 17<sup>th</sup> June, 1976.”

The matter came up for hearing on 2<sup>nd</sup> July, 1976 whereupon Counsel for the appellant objected to the matter being heard on the ground that 10 days notice of Trial had not been given as provided for by the Rules of Court.

Navo J. (as he then was) before whom the objection was taken overruled it on 8<sup>th</sup> July, 1976, holding that the entry for Trial was proper and that the matter should proceed.

On 21<sup>st</sup> July, 1976 Counsel for the appellant applied by Notice of Motion to appeal to the Court of Appeal against the ruling of 8<sup>th</sup> July.

In paragraph 4 of the Affidavit in support of the Notice of Motion sworn to by Counsel for the appellant on 10<sup>th</sup> July, 1976 the proposed grounds of appeal are set out as follows :-

“(a) The Learned Trial Judge erred in law equating Notice of Entry for trial – a precondition for entry for trial – as required by Rules 4 and 5 of Order 25 of the High Court Rules, with Notice of Hearing when he concluded in his said Ruling as Follows:-

“The Notice of trial stated that the matter would be heard in Freetown on Tuesday the 29<sup>th</sup> day of June a clear 12 days after it had been filed.”

(b) Notice of Trial having been given in accordance with Rules 4 and 5 above quoted and no

Order for a speedy trial having been first obtained in accordance with Rule 9 of Order 25 of the said High Court Rules the Learned Trial Judge erred in law in holding that the matter was properly before the Court for hearing on the 2<sup>nd</sup> day of July, 1976.”

The Judge declined to entertain the application and ruled as follows:

“Application refused.

It should be made to the Judge and by our Rules application to the Judge means Application in Chambers.

This application is not properly before the Court.”

An application was then made to the Court of Appeal on the 20<sup>th</sup> of July, 1976 for leave of appeal against the ruling of the Judge given on 8<sup>th</sup> July, 1976, but the Appeal Court on 28<sup>th</sup> October, 1976 dismissed the application on the ground that it was premature.

Leave was then sought from the Court of Appeal to the Supreme Court against the ruling of 28<sup>th</sup> October, 1976, but it was refused. Counsel for the appellant then applied to the Supreme Court for special leave to appeal from the ruling of the Court of Appeal made on the 28<sup>th</sup> October, 1976, and on the 3<sup>rd</sup> day of May, 1978 the Supreme Court inter alia, made the following Order:

(1) The Court of Appeal has unfortunately not considered and determined the complaints of the applicant. Taking all the circumstances into consideration we would grant special leave in order to enable this Court in the public interest to hear and determine the complaints of the applicant. We do feel that the grounds of appeal advanced are in order. Special leave granted accordingly for those grounds to be argued before the full Court.”

When the appeal came before us for hearing on 23<sup>rd</sup> January, 1980 it was pointed out to Mr. T. S.

Johnson, Counsel for the appellant that the whole sum and substance of his complaints in his appeal to the Court of Appeal was whether this matter was ripe for hearing when came up before the High Court and 2<sup>nd</sup> July, 1976 – i.e., whether the “Notice of Trial,”

both dated 17<sup>th</sup> June, 1976 – given by the respondent in this matter were in accordance with Order 25 of the Rules of the High Court. Counsel was accordingly directed that it would be most expedient if he confined his arguments to that aspect only of the appeal. At this request we granted a day’s adjournment of the hearing.

When the Court resume sitting on the next day Counsel for the appellant stated that his two grounds of appeal were those set out in paragraph 4 of his affidavit in support of his application for leave to appeal against the Ruling dated 8<sup>th</sup> July, 1976 of Navo J. (as he then was) sworn to on 10<sup>th</sup> July, 1976, already referred to (supra).

As regards the first ground of appeal Mr. Johnson pointed out that the action was entered for trial on 17<sup>th</sup> June, 1976 and that notice of trial was also given on that same day and he then referred to Order 25 Rules 5 of the High Court Rules which stipulates notice of trial shall be given before entering the trial. The Rule states as follows:-

“ Notice of trial shall be given before entering the trial, and the trial may be entered notwithstanding the pleadings are not closed, provided that the notice of trial has been given.”

He also referred to Rule 4 of Order 25 which stipulates that 10 days notice of trial shall be given; the Rules states as follows:

“4. Ten days notice of trial shall be given, unless the party to who it was given has consented, or is under terms or has been ordered to take short notice of trial, and shall be sufficient in all cases, unless otherwise ordered by the Court. Short notice of trial shall be four days’ notice unless otherwise ordered.”

He submitted that 10days notice of trial must be given before entering the action for trial, and further that Rule 8 of Order 25 made it quite clear that the date of Notice of trial and the date of Entry for trial cannot be the same day. When he was asked to state in what form the notice was to be given he submitted that the notice should state that:

“The above action will be entered for trial in the High Court, Law Courts Building, Siaka Stevens Street, on the 27<sup>th</sup> day of June, 1976 at 9 O’clock in the forenoon.

The trial is likely to last for 2 days.

Dated 17<sup>th</sup> June, 1976.”

On his second ground of appeal, he submitted that notice of trial is not analogous to notice of hearing: notice of trial is given by the party whose duty it is to see that the matter is entered for trial. He submitted finally that there was no Order – whether *ex parte* or otherwise – for this matter to be given a speedy hearing.

Mr. Halloway, Counsel for the respondent, in reply submitted that the purpose of giving 10 days’ notice of trial is not to take the other party by surprise. He stated that anyone looking at the Notice of trial itself could see that the other party has been given 10 clear days notice of intention to proceed with the trial, and that in fact the notice was served on the same day i.e. 17<sup>th</sup> June, 1976 on the solicitor on the other side, and if there was any irregularity at all steps should have been taken to set it aside under Order 50 of the Rules of the High Court. He referred to Rule 3 and 4 of Order 25 of the High Court Rules and also Order 36 Rule 13 of the English Rules particularly to form No. 16 in Appendix B Part 11 of Annual Practice 1957, and submitted that in as much as the Notice had complied with all these provisions it was a valid notice and not a nullity.

As regards the second ground of appeal Mr. Halloway submitted that Order 25 Rule 9 made it clear that “immediately an action has been entered for trial it shall be entered in a cause list to be kept by the Master and shall come on for trial in its order upon the list unless otherwise ordered.”

He stated that this was purely an administrative matter.

Finally he submitted that under Rule 8 of Order 25 the matter could be entered for trial on the same date as notice for trial was given and this in fact had been the long standing practice.

The Record shows that the Notice of Trial and Entry for Trial were filed on the same date.

Rule 8 stipulates:-

“If the party giving the notice of trial omits to enter trial on the day or day after giving notice of trial the party to whom notice was given may, unless the notice has been countermanded under the last preceding rule, within four days, enter the trial.”

Counsel for the appellant has never been able to adduce any reason to justify his suggestion that the action was entered for trial before ever notice of trial was given. Rule 8 makes it abundantly clear that notice of trial and entry for trial can be filed on the same date.

With regard to the form of notice Order 25 Rules 3 states as follows:

“3. Notice of trial shall state whether it is for the trial of the cause or matter or of issues therein: and the place and day for which it is to be entered for trial. It shall be in the form in use in the High Court of Justice of England on the 1<sup>st</sup> day of January, 1957 with such variations as circumstances may require. The notice shall also state whether the trial is likely to take half a day or full day or longer, it shall state how many days the trial is likely to take.”

The form of Notice (Form no. 16) given in the Appendix of B Part 11 of Annual Practice , 1960 which is applicable in the High Court by virtue of Order 52 Rule 3 of our High Court Rules, is as follows:-

“Take notice of trial of this - .....  
(or of the issues in this .....  
Ordered to be tried) (or as the case may be) by  
a Judge (with a common or special jury) (as  
the case may be) in .....  
for the. .... day of  
..... next.

X. Y. Plaintiff’s Solicitor (or as the  
case may be).

Dated.....

To Z., defendant’s Solicitor (or as the  
case may be)”.

It is quite evidence from the above that there is no special for of notice required, but that there may be “such variations as circumstances may require.”

The form of notice given by the respondent’s solicitor complied in all respects with the provisions of Rules 3, 4 and 5 of Order 25 of the Rules of the High Court.

“Ten days’ notice of Trial” is computed exclusive of the day of the day of service of the notice and the tenth day thereafter (which is the last day of the notice) may be named as the day of hearing. The appellant here in fact had more than 10 days notice of Trial. In my judgment therefore the complaint that the matter was not ripe for hearing when it came up before the Judge on 2<sup>nd</sup> July, 1976 cannot be supported having regard to the aforementioned Rules.

I find no merits whatsoever in the appeal and I would accordingly dismiss it.

I agree (Sgd) .....  
Hon. Justice C. A. Harding - J. S. C.

I agree (Sgd) .....  
Hon. Justice E. Livesey Luke - C. J.

I agree (Sgd) .....  
Hon. Justice O. B. R. Tejan - J. S. C.

I agree (Sgd) .....  
Hon. Justice A. V. A. Awunor-Renner – J. S. C.

I agree (Sgd)

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Hon. Justice K. E. O. During - J. A.

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