

SC. NO. 3/2002

IN THE SUPREME COURT OF SIERRA LEONE

JOHN SAHR YAMBASU & 3 ORS.

- Plaintiffs/Respondents

AND

HON. MR. ERNEST BAI KOROMA & 5 ORS.

- Defendants/Applicants

CORAM:

HON. JUSTICE DR. A. B. TIMBO

- C. J.

HON. JUSTICE V. A. D. WRIGHT

- JSC.

HON JUSTICE S. C. E. WARNE

- JSC.

HON. JUSTICE E. C. THOMPSON-DAVIS

- JSC.

HON. JUSTICE M. O. ADOPHY

- JSC.

Dr. Bu-buakei Jabbi

- For the Plaintiffs/Respondents

Mr. T. M. Terry

- For the Defendants/Applicants

RULING DELIVERED ON THE 3rd DAY OF *March* 2003
TIMBO, C. J.

Mr. Terrence Terry Counsel for the Defendants/Applicants filed an originating notice of motion before this Court seeking among other things, an order for extension of time in

which to file Statement of Defendants case in pursuance of Rule 92 (1) of the Supreme Court Rules 1982 (P. No. 1 of 1982).

Dr. Bu Buakei Jabbi for the Plaintiffs/Respondents raised a preliminary objection to the hearing of the said motion. He argued that there had been non-compliance on the part of Counsel for Defendants/Applicants firstly with Rules 1,3,6 and 12 of Order 9 of the Sierra Leone High Court Rules 1960 which he said are mandatory and applicable to these proceedings by virtue of Rule 98 of our Supreme Court Rules 1982, and secondly with Rule 30 of Order 12 of the English Supreme Court Rules 1960 pursuant to Rule 3 of Order 52 of our High Court Rules 1960.

In short, Dr. Jabbi contended that Counsel for Defendants/Applicants had failed to comply with the above-mentioned rules. He said Mr. Terry must file an appearance whether conditional or unconditional to the originating notice of motion before he can be heard.

Counsel for the Plaintiffs/Respondents then proceeded to catalogue what he perceived are the purposes and functions of entry of appearance. He said firstly, it is evidence of recognition or submission to the jurisdiction of the court by the defendant. Secondly, it is a formal indication to the Court and the party on the other side that the Defendant intends to defend the action on the merits. Thirdly, it formally demonstrates to the Court and the other party that the Defendant desires to object to any invalidity or irregularity in the issue or service of the said originating process and the statement of claim or indeed to the jurisdiction of the Court itself with respect to the claims or reliefs sought by the Plaintiff and lastly, it shows whether the Defendant wishes to defend the action in person or to appear by solicitor.

More specifically, Dr. Jabbi submitted that the procedure for actions in the original jurisdiction of the Supreme Court is analogous to the writs of summons procedure in the High Court. Therefore, in his submission, by virtue of Rule 98 of the Supreme Court

Rules the requirement for entry of appearance under Order 9 of the High Court Rules is also applicable to original processes in the Supreme Court.

In the result, Dr. Jabbi concluded that since the Defendants/Applicants have failed whether by themselves in person or through their solicitor to enter appearance to the Plaintiffs/Respondents' originating notice of motion, the application before us cannot or ought not to be entertained.

Mr. Terry's reply on the other hand was brief and terse. He maintained that having regard to the provisions of Rule 92 (1) it is not necessary to enter an appearance to an originating process in the Supreme Court. He said counsel for the Plaintiffs/Respondents' objection was therefore premature and must fail.

What does Rule 92 (1) say? I shall quote it verbatim because our ruling will inevitably turn on what interpretation we give to the said rule.

By this rule,

"A defendant upon whom a Notice of Motion and a Statement of the Plaintiff's case are served shall, if he wishes to contest the case, (emphasis mine) within ten days of such service, or within such time as the Court upon such terms may direct, file a statement of the defendants' case which shall be signed by the defendant or his Counsel."

Subsection (2) of Rule 92 further specifically states,

"2 the statement of the defendant's case –

- (a) shall set forth the facts and particulars, documentary evidence, or otherwise, verified by affidavit, upon which the defendant seeks to rely;
- (b) shall state the names and particulars of the witnesses, if any, whom he intends to call at the hearing;

- (c) shall state the address for service of his Counsel, where he is represented by Counsel and
- (d) may also include a list of the decided cases and of the statement of law on which he seeks to rely.”

And finally by Rule 97 (1),

“The Court may after considering the statement of the Plaintiff’s case and of the defendant’s case, the memorandum of agreed issues and any arguments of law, decide to determine the action and give judgment in court on a fixed date without argument or may appoint a time at which parties shall come before the Court for further hearing of the action.”

From the above, it can be seen that, our rules on the original jurisdiction of the Court are clear and specific. These have, in my view not only been expressly stated but have also been copiously and exclusively set out in Part XVI. All that a defendant who wishes to contest the matter is required to do is to file a statement of defence within the prescribed period or seek the leave of the Court for extension of time in which to do so. Rule 98 only applies where no provision is expressly made in the rules relating to the original jurisdiction of the Supreme Court.

The procedure established by those rules under Part XVI is peculiar in my opinion to original processes in the Supreme Court and are not analogous to the ordinary civil proceedings in the High Court. We will be overstretching the language of Rule 98 were we to hold otherwise. I agree, as was stated by E.W. Patterson in his book “Jurisprudence, Men and Ideas of Law” 1953 at p 559, “law is not a frozen static body of rules, but rules in a continuous process of change and adaptation; and the judge, at the final appellate level anyway, is a part – a determinant part of this dynamic process of legal evolution.”

Dr. Jabbi's submission is quite novel and interesting. But I do not see the reason nor the need for us to invoke here the provisions of Rule 98 in the guise of developing the law.

We thank Dr. Jabbi for his industry and resourcefulness but I am afraid his argument and authorities referred to have not persuaded us to hold in his favour. His preliminary objection is therefore overruled.

Handwritten signature/initials

- I agreeHON. JUSTICE V. A. D. WRIGHT *Wright* JSC.
- I agreeHON JUSTICE S. C. E. WARNE *Warne* JSC.
- I agreeHON. JUSTICE E. C. THOMPSON-DAVIES - JSC.
- I agree.....HON. JUSTICE M. O. ADOPHY *Adophy* JSC.