

CIV. APP. 3/2013.

IN THE SUPREME COURT OF SIERRA LEONE
(ORIGINAL JURISDICTION)

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE
ACT NO.6 OF 1991, SECTIONS 35(2) & 122 & 124 (1) (a)

AND

IN THE MATTER OF AN ACTION PURSUANT TO THE SUPREME COURT
RULES 1982 PART XV1. RULES 89-98 OF STATUTORY INSTRUMENT NO.1
OF 1982

AND

IN THE MATTER OF AN ACTION IN REGARD INTERNAL ORGANIZATION
AND PROGRAMMES OF THE SLPP CONTRAVENING AND FAILING TO
CONFORM TO THE DEMOCRATIC PRINCIPLES CONSISTENT WITH THE
PROVISIONS OF THE 1991 CONSTITUTION

BETWEEN:-

ALIE ESSA BANGURA -PLAINTIFFS/RESPONDENTS
(SUING ON BEHALF OF HIMSELF AND AS REPRESENTATIVE
OF DR.WUSU SANNOH & 23 OTHERS

AND

CHIEF BAI SHEBORA SOMANO KAPPEN 111-DEFENDANTS/APPLICANTS
CHAIRMAN & LEADER OF THE SLPP & 27 OTHERS

CORAM:

The Hon. Mr. Justice V. V. Thomas, JSC.- Presiding
The Hon. Mr. Justice P. O. Hamilton, JSC.
The Hon. Mrs. Justice A. Showers, JA.

COUNSEL:

Dr Bu-Buakei Jabbi, E. A. Holloway Esq., and A. Y. Brewah Esq., for the
Defendants/Applicants.

Yada H. Williams Esq., Osman Jalloh Esq. and Augustine Marrah Esq. for
the Plaintiffs/Respondents.

RULING DELIVERED ON THE 18th DAY OF JUNE 2014

By Originating Notice of Motion dated the 19th December 2013, the Plaintiffs instituted the action herein in which they are seeking a number of reliefs/orders from the Court in its original jurisdiction. Copies of the said Originating Notice of Motion together with the supporting affidavit were apparently served on the Defendants severally, following which said service,

their Solicitors were instructed to have conduct of their case in the matter. The said Solicitors, Jabbi Associates of Jia-Jina Chambers, filed a Memorandum of Notice of Appearance on behalf of all the Defendants on the 31st December 2013. On the 3rd January 2013, the Defendants' Solicitors were served with a copy of the Plaintiffs' said Originating Notice of Motion, several affidavits with exhibits attached and a copy of the Statement of the Plaintiffs' Case dated 30th December 2013.

It is against the aforesaid background that the Defendants/Applicants by Notice of Motion dated the 14th January 2014 have applied to this Court for the following reliefs/orders:-

1. A Declaration to the effect that the purported filing and issuing and subsequent purported serving upon the 1st - 28th Defendants/Applicants inclusive herein of the Originating Notice of Motion in the matter entitled as above were and/or are irremediably irregular for non-compliance with the following mandatory provisions of HCR 2007: Order 6, rule 7(1); Order 8, rule 4(4); and Order 10, rule 2(1) and rule 3(3) thereof, the said HCR rules being taken together with and in terms of and pursuant to the provisions of Rule 98 of SCR 1982.
2. A Declaration to the effect that, in the circumstances of the all-purported filing and issuing and serving upon the Defendants/Applicants herein of the Originating Notice of Motion in the matter entitled as above being irremediably irregular for non-compliance with such mandatory provisions as rule 7(1) of Order 6, rule 4(4) of Order 8, and rules 2(1) and 3(3) of Order 10, all of the HCR 2007, the said rules being taken together with and in terms of and pursuant to the provisions of rule 98 of SCR 1982:
 - (a). the said Originating Notice of Motion was neither requisitely "sealed" in order to be thereupon "deemed to be issued" nor was it "duly certified....as a true copy of the original process filed" for the purpose of being "duly served" upon the Defendants/Applicants herein; and so,
 - (b). this Honourable Supreme Court "has no jurisdiction over" any of

the several Defendants/Applicants herein "in respect of the subject matter of the claim or the relief or remedy sought in the action" in the aforesaid Originating Notice of Motion herein.

3. AN ORDER WHOLLY SETTING ASIDE AND/OR DISMISSING, as applicable, both the Originating Notice of Motion in the matter entitled herein as above and the purported service of the said process on the Defendants/Applicants herein as having "not been duly served on" them, the said setting aside and/or dismissing on the ground of irremediable irregularities of non-compliance in the purported issuing and/or purported service on the said Defendants/Applicants herein, in that the copy/copies of the said Originating Notice of Motion purportedly issued and/or purportedly served on each and/or any of the said Defendants/Applicants herein was/were neither "sealed" nor "duly certified" by the Registrar of the Supreme Court for the purposes of being "deemed to be issued" and for being "duly served on a Defendant" "as a true copy of the original process filed", as stipulated and required severally and collectively by the relevant mandatory provisions of the Supreme Court Rules (SCR) 1982 and the High Court rules (HCR) 2007, to wit, HCR 2007: Order 6, rule 7(1); Order 8, rule 4(4); and Order 10, rule 2(1) and rule 3(3), the said HCR rules being taken together with and in terms of and pursuant to Rule 98 of SCR 1982.
4. ALTERNATIVELY, and only if the forgoing relief items 1, 2 and 3 hereof are not granted, AN ORDER EXTENDING THE PERIOD within which the Defendants/Applicants herein are required to file their Defence (s), as applicable, to the Originating Notice of Motion herein.
5. ANY FURTHER OR OTHER RELIEF OR ORDER that this Honourable Supreme Court may deem fit and just in all the circumstances.
6. COSTS of this application AND DAMAGES (if any) suffered by the 1st – 28th

Defendants/Applicants herein and issuing or arising from or anyhow else pertaining to the purported service of the Originating Notice of Motion in the matter entitled as above on the respective Defendants/Applicants inclusive herein to be borne by the Plaintiff/Respondent herein and those he specifically poses "as Representative of" in the said action.

It is the original jurisdiction of this court that both the Plaintiffs/Respondents and Defendants/Applicants have respectively invoked for their action instituted by way of an Originating Notice of Motion dated 19th December 2013 and application by way of Notice of Motion dated 14th January 2014. In order to address the issues raised in the said Notice of Motion of the Defendants/Applicants, it is necessary to set out Rules 89 and 98 of the Supreme Court Rules in extenso as follows:

"89. (1) Save as otherwise provided in these Rules, an action brought to invoke the original jurisdiction of the Court shall be commenced by Originating Notice of Motion in Form 8 set out in the First Schedule to these rules which shall be signed by the Plaintiff or his Counsel.

(2) The Notice of Motion shall be supported by an affidavit setting as concisely as possible the nature of the relief sought by the plaintiff and shall state ---

(a) the full name of the plaintiff and the capacity in which he is bringing the action;

(b) the address for service of the plaintiff and of his Counsel, if any, which shall be an address for service;

(c) the names and address of all parties who may be directly affected by the action; and

(d) such other particulars as the Court may from time to time direct.

(3) A copy of the Notice of Motion shall be served on each of the parties mentioned in it as directly affected who shall be deemed to be the Defendants and on the Attorney-General and Minister of Justice if

not named specifically as a defendant. In addition the Court may order that the Notice of Motion be served on any other person.

(4) The plaintiff shall within three days of the service of the Notice of Motion and supporting affidavit file an affidavit of service thereof.

(5) The Court may at any time on its motion or on the application of a party, order that any other person be made a party to the action in addition to or in substitution for any other party."

"98. Where no provision is expressly made in these Rules relating to the Original and Supervisory Jurisdiction of the Supreme Court, the practice and procedure for the time being of the High Court shall apply *mutatis mutandis*".

Counsel for the Defendants/Applicants, Dr Bu-Buakei Jabbi, has strenuously argued both orally before the Court and in his written submissions that reference must be made to the High Court Rules 2007 by virtue of Rule 98 *supra* "to utterly set aside and/or dismiss out of court for grossly serious and irremediable irregularities for non-compliance" with these High Court Rules. On the other hand Counsel for the Plaintiffs/Respondents, Mr Yada Williams, has equally vigorously argued that by virtue of Rule 89 of the Rules of this Court, the High Court Rules 2007 are inapplicable in the circumstances of this particular case.

Part XV1 of the Supreme Court Rules 1982 sub-titled "Original Jurisdiction" deals extensively with the manner in which this jurisdiction is invoked and exercised. Sub-rules (1) and (2) of Rule 89 *supra* describe the type of original process to be used to invoke the original jurisdiction of the Court and provides the appropriate form to be used for the purpose. This is the manner in which the "commencement" of the action takes place. It follows that if this form is followed the original jurisdiction of the Court has been invoked and the action commenced, and if it is not followed, the action to invoke the original jurisdiction of the Court cannot commence. The word "commencement" is defined in the Interpretation Act, 1971 Act No.8 of 1971

as follows:

“commencement” when used with reference to an enactment means the time at which the enactment comes into operation”.

The word “enactment” in the definition of “commencement” is also defined in the Interpretation Act, 1971 Act No.8 of 1971 as follows:

“enactment” includes legislation of any type whatsoever having the force of law in Sierra Leone”.

Applying the above definitions in the interpretation of the Rules of this Court, which Rules have the force of Law, I hold that the time at which the original jurisdiction of the Court is invoked and the action commenced is when an Originating Notice of Motion as provided for in Form 8 in the Schedule to the Rules is filed in the Supreme Court Registry. The form provided does not require that the Originating Notice of Motion should be sealed. However such Originating Notice of Motion should be signed by the Plaintiff or his Counsel and in this case, it was signed by Counsel for the Plaintiffs. Evidence of such filing is the Supreme Court Registry stamp, date and signature of the relevant registry official.

Both sub-rule 3 of Rule 89 and Rule 91 deal with the service of the Originating Notice of Motion and Statement of the Plaintiff's Case on the Defendants and the Attorney-General. The other Rules in this Part of the Rules of the Court deal with various other matters regulating the process when the Original Jurisdiction of the Court is invoked. It is to be observed that it is at the end of all of these provisions in Part XV1 of the Rules of the Court dealing with the manner in which the particular jurisdiction of the Court is exercised that we find the omnibus provision of Rule 98 which makes provision for matters not expressly provided for in the foregoing Rules.

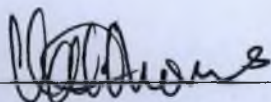
In my judgment therefore Rule 98 is only applicable when there are no provisions expressly made dealing with or relating to the manner in which the Original Jurisdiction of the Court is invoked and exercised. In support of his contention that the High Court Rules 2007 are applicable to determine whether the Defendants/Respondents have properly and validly invoked the

original jurisdiction of this Court, Counsel for the Applicants cited a number of election petition cases and other cases. These include the recent decision of this Court in John Oponjo Benjamin and Others v Dr Christiana Thorpe and Others (Unreported) SC No.4/2012 (Ruling delivered on 14th June 2013). In our view these cases cited are no authority for the proposition that the Court should strike out or wholly set aside the originating process in this case for non-compliance with the various provisions of the High Court Rules 2007 which require sealing of an originating notice of motion and service of a certified copy of that Originating Notice of Motion. Counsel argued that the relevant provisions are mandatory and any failure to comply with them fatal in this action instituted in the Supreme Court, in view of Rule 98 of the Rules of this Court. But the primary question is whether there is any need to refer to the High Court Rules in the light of the clear and express provisions found in Part XVI of the Supreme Court Rules. These rules make adequate provision for the commencement and institution of the originating process and the form to be used for the purpose. Counsel for the Plaintiffs/Respondents submitted that he has fully complied with those relevant Supreme Court Rules and has consequently and properly invoked the Original Jurisdiction of the Court. He cited a number of relevant authorities in support of his submissions.

We hold that the Original Jurisdiction of this Court has been validly invoked and that there is no need to use the High Court Rules 2007 as there are express provisions in the Rules of this Court both for the institution of the action and service of the Originating Notice of Motion on the Defendants. While the High Court Rules 2007 require that a certified copy of an originating notice of motion must be served, the Supreme Court Rule 89(3) only require that "a copy of the Notice of Motion shall be served on each of the parties". We agree with the submission of Counsel for the Plaintiffs/Respondents and hold that they have complied with the Rules of this Court in the institution of the action herein and the service of the appropriate originating process. It should be noted that Rule 92 of the Rules

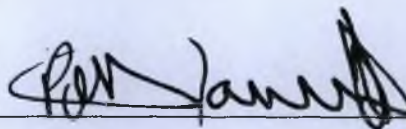
of this Court also makes express provision for the manner in which a defendant responds to the Originating Notice of Motion once he has been served and the period of ten days within which a Statement of the Defendant's Case should be filed.

In the premises, reliefs/orders 1, 2 and 3 are refused and the Defendants/Applicants must file and serve their Case (if any) within ten days of this Ruling. The Plaintiffs/Respondents shall have the costs of this application assessed at Le3,000,000.



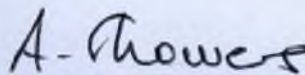
HON MR. JUSTICE V. V. THOMAS

I agree



HON MR. JUSTICE P.O. HAMILTON

I agree



HON MRS. JUSTICE A. SHOWERS