C. C. 24/13 2013 I. NO. 3

(In the High Court of Sierra Leone)

Family and Probate Division

Between:

Issam Idriss

(As Executor and Trustee of

The Estate of Ibrahim Abdul Hussein - Plaintiff

Basma (deceased testate) Suing by His

Attorney Khalil Ashour

And

Basam Ibrahim Basma - Defendant

Counsels:

Osman Jalloh, Esq. and C.A.B. Sesay for the Plaintiff/Applicant

Wara S. Serry-Kamal and T. Conteh, Esq. for the Defendant/Respondent

Ruling on an Application for the Restoration of the Summons for Direction of 4th June, 2014 and for the Plaintiff and His Witness to Testify via Video Conference Facility (VCF), delivered on Tuesday, 2nd June, 2020, by Hon. Dr. Justice Abou B. M. Binneh-kamara.

1.0 Introduction.

This ruling is contingent on an application made by Yada Williams and Associates, pursuant to Sub rule (3) of Rule 6 of Order 28 and Rule 2 of Order 30 of the High Court Rules, 2007, Constitutional Instrument N0. 25 of 2007 (hereinafter referred to as The HCR, 2007) via a Judge's Summons, dated 28th January, 2019. The application, which is strengthened by the affidavit of Amadu Sidi Bah Esq., sworn to and dated 28th January, 2019, contained just one (1) exhibit attached thereto; that is, Exhibit A: a copy of the order for summons for direction, dated 4th June, 2014.

The principal thrust of the application is for the restoration of the summons for direction of 4th June, 2014, the need to allow the Plaintiff/Applicant (hereinafter referred as Plaintiff) and his witness (Ann Bunce Linsell) to testify via VCF, any further consequential order or orders that this Honourable Court may deem fit and just; and cost. Meanwhile, on Thursday, 26th May, 2019, Wara Serry-Kamal of Serry-

Kamal and Co. indicated that she was opposed to the second order prayed for in the aforementioned application; and simultaneously craved the Bench's indulgence to accord her the opportunity to go file an affidavit in opposition to that application, on behalf of the Defendant/Respondent (hereinafter referred to as the Defendant).

Essentially, this Honourable Court, in its ruling of Thursday, 26th May, 2019, ordered that she be given the opportunity to file an affidavit in opposition to the application. Consequently, on the 6th May, 2019, Osman Jalloh Esq., moved the Court on the contents of the foregoing Judge's Summons and its requisite affidavit; whilst making a plethora of submissions about why he is of the legal opinion that this Court is obliged to grant the application.

1.1 The Submissions of Counsel for the Plaintiff.

The following submissions constitute the central arguments of Counsel:

1. In respect of order one, which is for the restoration of the foregoing summons for direction, Counsel refers to Exhibit A, which is the order for summons for direction, dated 4th June, 2014. Counsel alludes to particularly the eighth order, which granted liberty to restore the summons for further direction. Further, Counsel rationalises the need for the first order in Sub rule (3) of Rule 6 of Order 28 of The HCR, 2007.

2. Regarding the second order, Counsel relies on Order 30 Rule 2; noting that it is within the purview of the Court to direct that the proposed witnesses do prepare notarized statements, which are to be served on the other party; while they are allowed to orally testify via VCF, based on the foregoing provision.
3. Counsel also relies on Rule 1 (2) of Order 30 of The HCR, 2007; and argues that this Honourable court can make different orders, relating to different issues of facts or different witnesses; adding that Rule 1 (5) of Order 30 is quite instructive on this point.
4. Counsel argues that this application is also underpinned by a very serious human rights issue. The Plaintiff should be given the opportunity to present his case. Counsel also refers to the following judicial authorities, which he thinks should pummel this Honourable Court, into granting the application: Garcin and Others **v.** Amerindo Investment Advisors Ltd. and Others (1991) 4 All ER 655, The Estate of Lascelles Samuel Panton **v.** Sun Development Ltd. SCCA 25 OF 2009; delivered on 29th May, 2009 and Polanski **v.** Conde Nast Publications (2005) Uk, House of Lords, 10.
5. Counsel references the procedure in Order 32 of The HCR, 2007; indicating that the Court can have the depositions of the witnesses taken in a foreign jurisdiction, before either an examiner or a Judge, but he argues that should the court give credence to the Order 32

procedure, it would not be possible for the deponents to be cross-examined on the contents of the deposition, unless Counsel on the other side travels to the United Kingdom to do so. This, he retorts, will be too expensive; hence he firmly argues for the application to be granted.

1.2 <u>The Submissions of Counsel for the Defendant.</u>

The following submissions constitute the arguments, which Counsel proffered, contravening the foregoing case, which is presented above on behalf of the Plaintiff:

1. There is no provision in both the procedural and substantive laws of Sierra Leone, which clothes this Honourable Court with the jurisdiction to grant the second order in the application. Should the court attempt to grant the application that would amount to an infringement of the jurisdiction of the law makers (Parliament).
2. Counsel on the other side references Rule 2 of Order 30 of The HCR, 2007, but the said rule does not in any way give this court the jurisdiction to make an order, which would in essence alter the practice in our jurisdiction that witnesses come to court and testify in person, to give the court the opportunity to observe the demeanour of witnesses. This will no doubt amount to an alteration that requires the intervention of the legislature or the

Rules of Court Committee; or the Chief Justice, who is empowered by Rule 1 of Order 62, to make practice direction in any cause or matter, wherein the rules do not specify the procedures that should guide proceedings.

3. Counsel on the other side references, a plethora of authorities that are inapplicable in our jurisdiction; noting that such authorities are devoid of any legal effect in Sierra Leone. Counsel refers this Honourable Court to both Sections 74 and 170 of the Courts Act N0.31 of 1965 and the Constitution of Sierra Leone, Act N0.6 of 1991.
4. It should be noted that in jurisdictions, where testimonies can be elicited via VCF, their rules of evidence and procedures, clearly articulate this position. A clear example on this point is the Civil Procedure Rules of England and Wales (1998). Part 32 Rule 3 provides for testimonies to be elicited via VCF. Counsel concludes that it is imprudent for Counsel on the other side to make this objectionable application for his witnesses, who are out of the jurisdiction, to testify via VCF; noting that the application must be dismissed with substantial cost.

1.3 Analytical Exposition: A Review of the Apposite Judicial Literature on the Justiciability of Eliciting Evidence via Video Link in the Commonwealth Jurisdiction.

Humanity's progression in every sphere is being constantly pummeled, by the on-going information revolution. In fact, every sphere of institutional management and administration, in general, is being impacted by the information revolution, which has inter alia ushered in the requisite economy of cost and time, efficiency and reliability, at institutional level. In the Commonwealth jurisdiction, the administration of justice has also undoubtedly benefited from the mesmerizing laurels of information technology, which has reliably strengthened the webs of civil and criminal justice, thereby providing the appropriate succour for the rule of law.

Alas! In tandem with this progression, the rules of evidence and procedures, in most common law jurisdictions, are now being constantly tailored to realise the ideals of the rule of law and justice. The United Kingdom (UK) in particular had, since the 1960s, begun reforming its rules of evidence and procedures, consonant with the exigencies of time. Subsequently, other states in the Commonwealth jurisdiction, also joined the bandwagon of the inevitable progression in information technology, by amending and repealing archaic rules of evidence and

procedures that inhibited the ideals of the rule of law and justice. Consequently, there are now a plethora of judicial authorities, rationalised in so many decided cases, which are said to be the locus classicus on the Justiciability of eliciting evidence via video link in the Commonwealth jurisdiction.

One leading authority, which Counsel for the Plaintiff, referenced that worth, a thorough exploration in this ruling is, **P**olanski **v. C**onde Nast **P**ublications **L**td. {2005} UKHL 10. In this case, the Claimant, Polanski (a French Citizen), brought an action for libel in England against the Defendant (Conde Nast Publications Ltd) for the publication of an article in their July 2002 edition of the Vanity Fair magazine. The article, inter alia, alludes to an incident of an apparent inappropriate sexual advance, made by Polanski towards Elaine, a beautiful Swedish lady, on the 27th August, 1969, in her restaurant in New York, USA.

The incident allegedly took place, immediately after the death and burial of Polanski's wife, the actress Sharon Tate, who was murdered at her home in California by members of the so-called 'Mansion Family'. Polanski, who was working in London, travelled from California after the burial on 13th August, 1969. He passed through New York and went to Elaine's restaurant. Alas! The article alleges that in manifesting his overtures for romance, Polanski slid his hand inside Elaine's thigh and

began a long, honeyed spiel, which ended with the promise 'And I will make another Sharon Tate out of you'.

The article further asserts that that inappropriate behaviour should not have come from a man, who was supposed to have been mourning his wife; after her brutal death. The publication was widely circulated in USA, England and France. Polanski, who was now living in France, had been convicted (in August 1977) of the charge of unlawful sexual intercourse with a girl aged 13 years; after pleading guilty before a Californian court. He escaped in custody before he could be sentenced. He then went to France (not England) where he lived up to July, 2002, when the allegedly defamatory contents were published.

Even though the publication was widely circulated in the aforementioned countries, it was in England that he brought the action for defamation. He could not have done so in the USA, because he was a fugitive there. He could have however initiated the action in France, but chose not to do so. Nonetheless, the peculiarity of the facts of this case that directly resonates with the application of 28th January, 2019, which this Honourable Court must determine, is that, Polanski, via a pre-trial motion, applied, pursuant to the Civil Procedure Rules (CPR), SI 1998/3132 Pt. 32.2, for him to be permitted to testify via VCF; as he could not go back to London after 35 years, because he was a fugitive from the

USA. His apprehension is anchored by the fact that because, England has an extradition treaty with the USA, he feared that he could be arrested and extradited to the USA from England, should he go there to testify. The application thus came before Justice Eady, who on 9th October, 2003, held that 'the reason underlying the application was unattractive, but this did not justify depriving Mr. Polanski of his chance to have his case heard at trial'.

However, the Court of Appeal (see 2004 1WLR 387), comprising Simon Brown, Jonathan Parker and Thomas LJJ, overturned the order of Justice Eady; and held that 'the general policy of the courts should be to discourage litigants from escaping the normal processes of the law rather than to facilitate this. The Judge's order overlooked and undermined this policy. Giving evidence via video conference link is not yet the procedural norm'. Dissatisfied with the foregoing decision, Polanski filed an interlocutory appeal to the House of Lords. Lords Nicholls, Sylnn, Hope, Carswell and Baroness Hale, on the 10th February, 2005, handed down their decisions on the interlocutory appeal.

Whereas Lords Nicholls, Hope and Baroness Hale, overturned the overwhelming decision of the Court of Appeal; Lords Sylnn and Carswell, were in agreement with the Justices of that Court. So, the majority decision, supporting the position of Justice Eady on the application,

eventually became a binding judicial precedent in England on that application. Essentially, the principal thrust of the majority decision of the House of Lords, is underscored by the following reasoning:

> '... the general rule should be that in respect of proceedings properly brought in this country, a claimant's unwillingness to come to this country because he is a fugitive of justice is a valid reason, and can be a sufficient reason, for making a VCF order. I respectfully consider the Court of Appeal fell into error by having insufficient regard to Mr. Polanski's right to bring these proceedings in this country even though he is and will continue to be a fugitive from justice'

Meanwhile, an analysis of the existing literature on the application, depicts that the House of Lords' majority decision in the aforesaid locus classicus, was a vivid confirmation of the decisions in **G**arcin and **O**thers **v. A**merindo **I**nvestment **A**dvisors **L**td and **O**thers (1991) 4 All ER 655 and **R**owland **v. B**ock (2002) EWH 692 (QB), (2002) 4 All ER 370. Essentially, Justice Morritt in the former case, held that the Court's jurisdiction under RSC Ord. 38 r3a to order 'that evidence... shall be given at the trial in such a manner as may be specified' by the court includes jurisdiction to order that evidence may be given by a witness in a foreign jurisdiction by means of a live television link with the court. Meanwhile, the decision in

the former case also dovetailed with the position of Justice Newman in the latter, who made an order in favour of eliciting evidence via VCF in respect of a claimant who risked arrest and extradition to the USA on charges of fraud.

Moreover, the Supreme Court of Seychelles {see Civil Side CS 15/2018 (2018) SCSC938} in **M**rs. Barbara **M**atilda **K**aren **P**oiret (1st **P**laintiff) and **M**s. **S**ylvia **E**lizabeth **P**eira **P**oiret (2nd **P**laintiff) **v**. **T**he **S**eychelles **P**ension **F**und (1st Defendant) and **M**rs. **M**arie **A**nge **W**aye-Hive (2nd **D**efendant), was also faced with the contentious issue of eliciting evidence via VCF. R. Govinden J., on 11th October, 2018, ordered for evidence-in-chief, cross-examination and re-examination of a witness that is resident abroad to be done through Skype; noting that this is the settled position of the law in circumstances for which there insurmountable obstacles that prevent litigants from physically attending civil proceeding in Seychelles.

Further, there are two other Jamaican authorities that resonate with the issue of eliciting evidence via VCF that cannot be left to fester unacknowledged in this analytical exposition. These are the cases of the **E**state of **L**ascelles **S**amuel **P**anton (Represented by **M**r. **D**esmond **P**anton) **v. S**un **D**evelopment **L**imited (Supreme Court Civil Appeal N0. 25/2009) and John **M**orris **v. R**adio **J**amaica **L**imited and **L**atoya **J**ohnson

(2016) JMSC Civ. 197. In the former case, the Applicant (Errol Panton) who is one of the executors of the Last Will and Testament of Lascelles Samuel Panton, lived in Florida, USA. He was to testify (as a principal witness) on behalf of the defense.

He claimed in his affidavits, sworn to and dated 15th November, 2007 and 6th May, 2008, supporting his application to attend the proceedings via VCF, that his going to Jamaica to testify would cause a very serious hardship to him as he was apprehensive, because he had had a deep seated animosity with his two brothers (Donald Panton and Desmond Panton), who are the other executors of the Last Will and Testament of their deceased's father aforesaid. He also deposed that the cost to travel to Jamaica and back to the USA, was going to be excruciatingly painful and time consuming for him. He however undertook to meet the cost of the application, should the order to testify via VCF, be granted.

Nonetheless, Desmond Panton, in opposition to his brother's affidavits, filed an affidavit, sworn to and dated 9th October, 2008. Paragraph 12 of the said affidavit is worth reproducing herein for ease of reference:

> ...I say that the video link at the mediation was of particular concern. Throughout the proceedings the reception was poor. At times we could not see and hear Errol at the same time. Most importantly Errol's behaviour on video link was

abominable. He shouted and made scurrilous accusations against me. He used indecent language, which so shocked my Attorney that she was obliged to leave the room. I verily believe that unless he is present and under the control of the Trial Judge, my brother will disrupt the trial proceedings by his intemperate behaviour.'

Meanwhile, Justice Anderson on 13th October, 2008, granted the application, permitting the Applicant to attend the proceedings via VCF, pursuant to the Civil Procedure Rules 29.2 (1) and 29.3 of 2002. Nevertheless, the Appellant, who became disillusioned with the Trial Jude's ruling on the foregoing application, appealed the ruling, which was eventually overturned by a unanimous decision of the Court of Appeal of Jamaica, presided over by Cooke, J. A.; whilst Panton P. and Harris, J. A, were in complete agreement with him. The appeal was upheld and the order to attend the proceedings via VCF was repudiated and relegated to the doldrums.

In his clearly articulated conclusion, Cooke J. A., held:

... I am compelled to disturb the discretion exercised by the court below. That court did not properly analyse the evidence pertaining to the issues before it. There was no sufficient reason to depart from the general rule that a witness should attend in person to give

evidence. I would allow the appeal. I would further award costs to the appellant both in this appeal and in respect of the hearing in the court below.

Significantly, the facts of the latter case are quite straightforward. An action for defamation was brought against the Radio Jamaica Limited (1st Defendant) and Latoya Johnson (2nd Defendant), who was living in Redan, Georgia, USA. The 1st Defendant's only witness of fact was the 2nd Defendant, who was out of the jurisdiction. On the 26th October, 2016, the 1st Defendant filed a pre-trial motion, pursuant to Sections 2, 3, 5 and 6 of the Evidence Special Measures Act, 2012 and the Civil Procedure Rules 29.2 (1) and 29.3 (2002), requesting the court to inter alia, order that the 2nd Defendant be permitted to attend the trial via VCF.

The 2nd Defendant who was heavily pregnant, when the application was made, had given birth; but she would have to travel with her very young baby to Jamaica for the trial. In fact, it was further evident that her requisite travelling documents, were to be updated; and hence not readily available. The trial Judge, Wint- Blair, J. (AG.), circumspectly analysed the peculiarity of the surrounding circumstances of the facts and concluded that the application is not devoid of the requisite merits for the order to be granted. He noted thus:

'...A modern, efficient trial system is the goal and video link evidence is able to take the courts one step closer. It is not for the courts to decry modern technological advances which save time, cost and eliminate delay since it is those factors, which are the greatest obstacles to efficient court administration.'

Meanwhile, domestically, I will allude to one of the leading Sierra Leonean authorities, on the need to allow witnesses, who are not in the jurisdiction, to attend judicial proceedings, via video link. Surprisingly, though either Counsel never alluded to the case of **W**uroh **S**ununu **T**imbo (**P**laintiff) **v. M**abinty **K**oroma (**D**efendant) CC. 5/2014 2014 T. N0. 1 (Unreported), it is one of the locus classicus, in our jurisdiction that strongly and positively, correlates with the application of 28th January, 2019. Counsel for the Applicant (M. P. Fofanah Esq.), by notice of motion dated 1st March, 2019, inter alia, applied for an order to permit, Dr. Paul Owusu Baah and Dr. Evans Buffah, living in Ghana, to attend the trial via VCF; as their testimonies, were deemed crucial to his case.

Nevertheless, Counsel for the Respondent (C.C.V Taylor Esq.), objected to an order being made by the court, allowing the said witnesses to testify via VCF. He furthered that there is no common law authority; or any provision in The HCR, 2007, that would justify such order. Counsel also cited the issues of how could the witnesses be sworn; how would

their identities be verified; and how would their testimonies be received; as some of the practical difficulties that would confront the court, should it go ahead to grant the application. Nonetheless, after a careful consideration of the arguments and the requisite provisions in The HCR, 2007, The Hon. Justice Komba Kamanda, granted the application and stated that:

> 'The simplest approach is to produce the witnesses in court to testify, but where that is practically impossible due to insurmountable challenges; with the advent of technology, the court sees nothing wrong in allowing such witnesses to give evidence via video link on What app or any other available means. The courts must be receptive to technological advancement as far as giving evidence is concerned, once it is in the interest of the justice of the case. If the court holds otherwise then it will be extremely difficult or impossible to arrive at the truth.

Significantly, the foregoing analysis, clearly articulates the position of the Superior Court of Judicature in the Commonwealth jurisdiction on the Justiciability of the admissibility of evidence via VCF. It is important to note, that there are certain commonalities that permeate the cases cited above, that seem to be fundamentally crucial to the determination of the

application of 28th January, 2019. I will thus highlight the said commonalities as follows:

1. In all the cases cited above, there are expressed statutory provisions, rationalised in the rules of evidence and procedures, of the Superior Courts of Judicature of the respective states (save for Sierra Leone) that guide their civil proceedings, on the need to elicit evidence via VCF.
2. The decisions in virtually all the cases are uniform. The Superior Courts of Judicature in the Commonwealth jurisdiction seem to have embraced the significance of information technology in the administration of justice. So, in appropriate circumstances, they are prepared to give credence to the Justiciability of the admissibility of evidence via VCF.
3. The circumstances that should warrant the denial of applications for litigants to attend civil trials via VCF, should be just, fair and reasonable; as seen in the Polanski Case.
4. In respect of the circumstances in which Respondents chose not to file affidavits in opposition to applications for evidence to be elicited via video link, the courts are always prepared to grant such applications.

5. It is not for the courts to decry modern technological advances which save time, cost and eliminate delay since it is those factors, which are the greatest obstacles to efficient court administration.

1.4 Critical Context: An Explication of the Circumstances Culminating in the Determination of the Application

The circumstances that culminated in the application of 28th January, 2019, are vividly explicated in the very supportive affidavit that accompanied the Judge's Summons. Further, Amadu Sidi Bah Esq., deponed to a plethora of facts between paragraphs 2 and 13 that are fundamentally essential to this application. My reading of the said affidavit, depicts that it should be legally and rationally expedient, for me to put the most salient facts in that affidavit into perspective, by reproducing some of its paragraphs, prior to any ipso facto analysis of its contents in its entirety. Against this backdrop, I hereby sequentially reproduce the contents between paragraphs 5 and 11, for ease of reference:

> Paragraph 5: That the Plaintiff has informed me and I verily believe that the Plaintiff has an acute fear of flying on airplanes. That the last time he attempted to board an airplane, he suffered from panic attack and vomited profusely. In fact, when he even considers flying on an airplane, he

experiences intense, persistent anxiety, distress and impairment of his ability to function. He therefore cannot make the trip to Sierra Leone to testify.

Paragraph 6: That I have been informed by the Plaintiff and I verily believe that he has severally reached out to the other witness, Ann Bunce Linsell (a notary Public), who is resident in the United Kingdom. She is a witness to the Last Will and Testament of Ibrahim Abdul Hussein Basma; and had made a witness statement in this matter, but in view of the demands of her work, she is constrained and indisposed to make the trip to Sierra Leone to testify in this matter.

Paragraph 7: That I verily believe that the indisposition of both factual witnesses is hindering the ability of the Plaintiff to proceed with the trial of this matter.

Paragraph 8: That the testimonies of the said witnesses are materially important to the Plaintiff's case; and that via video link, I believe that this Honourable Court can elicit evidence from the Plaintiff and his witness.

Paragraph 9: That the Plaintiff is willing to cover the costs involved in himself and Ann Bunce Linsell testifying via video link.

Paragraph 10: That I verily believe that with the improvements in technology and the internet quality, the court will access a very good connect; and will receive crystal clear pictures of the witnesses.

Paragraph 11: That I verily believe that the Defendant's solicitors, would have an opportunity to cross-examine the witnesses and would not be prejudiced by the Court, granting the orders sought in this application.

However, it is important to appreciate that, in its ruling of Thursday, 26th May, 2019, this court ordered that Counsel on the order side, be given the opportunity to file an affidavit in opposition to the application. Contrariwise, as a result of inadvertence, or otherwise, she did not file any affidavit in opposition, but categorically stated her objection to the second order prayed for in the application of 28th January, 2019, relating to the elicitation of the testimonies of the Plaintiff and his witness via VCF. The points of law on which she grounded her opposition to that order as requested, are accordingly catalogued above, but none of the facts, deposed to in that affidavit is contested.

So I will lend credence to the facts in the affidavit, as they are uncontestably deponed to. However, I will now essentially proceed to juxtapose the argumentations and protestations, which Counsels have canvassed, concerning whether the application, should or should not be granted. Meanwhile, the very first point, which I am inclined to unravel is whether the application is cognate with any human rights issue. My understanding of the precepts and norms of human rights; against the backdrop of Chapter III of the Constitution of Sierra Leone, Act N0.6 of 1991 (hereinafter referred to as Act N0.6 of 1991), informs me that the

application touches and concerns, a fundamental human rights issue {see Section 23 (2) of Act Ñ0.6 of 1991}, which is in tandem with the right to a fair trial and the principle of 'natural justice', dubbed 'hear the other side'.

Nevertheless, because he is out of the jurisdiction, the Plaintiff has instituted this action through his attorney (Khalil Ashour). Apparently, the contents between Paragraphs 6 and 11 of his affidavit, are instructive of the extent to which the Plaintiff's testimony and that of his witness, are very much crucial to his case. It is clear in paragraphs 5 and 6 that neither the Plaintiff, nor his witness (Ann Bunce Linsell), resides in Sierra Leone. And for reasons articulated in the contents between Paragraphs 5 and 11 of that affidavit, it is like that they both cannot come to Sierra Leone now to proceed with this matter; and justice delayed is justice denied, but simultaneously, justice hurried is justice buried.

So, I am obliged to critically evaluate every other legal and factual consideration that would aid the determination of the application in a just, fear and reasonable manner. Moreover, it cannot be disputed that the Plaintiff, is as in dire need of justice, as the Defendant. But justice can only be seen to be done, when both parties are accorded the constitutional right to be heard. As the right to be heard by an independent and impartial judicial institution is bolstered by the

aforementioned principal of 'natural justice', there is therefore a very clear human rights issue in the application. But would the Plaintiff's right to be heard, be denied, should this Honourable Court, dismiss the application of 28th January, 2019? The question can most definitely be answered in the affirmative, but it should be noted, that Counsel for the Defendant, does not mention anything about human rights. Neither does she contend the right of the Plaintiff to be heard.

Her argument is simple: This Honourable Court lacks the requisite jurisdiction to make an order for the Plaintiff and his witness to testify via VCF, because neither the substantive nor the procedural law of Sierra Leone supports that; noting that the courts would be seen to be infringing on the jurisdiction of Parliament and the Rules of Court Committee (RCC) on the one hand; and the power of the Chief Justice, who is empowered by Order 62 of The HCR, 2007, to issue Practice Direction, in every circumstance, wherein the rules are unclear about the procedure to be invoked; on the other hand.

The foregoing contention is no doubt a robust one, but is it robust enough to render the application negligible? The answer to this question will require a thorough analysis of the apposite provisions of The HCR, 2007; against the backdrop of Counsel's contention. Essentially, my attentive and systematic perusal of the provisions of The HCR, 2007,

depicts that, even though there is no express provision, relating to the elicitation of evidence via video link, that does not ipso facto mean that should the application be granted, the powers of the Legislature, RCC and that of the Chief Justice in Order 62, would be usurped. The responsibility of the Court is to interpret and give effects to the existing, albeit archaic rules, in the interest of the justice of every case. This judicial position on the interpretation of the law was bolstered in 1961 by **H**is **L**ordship **V**iscount **S**imonds in **S**cruttons **L**imited **v. M**idland **S**ilicones **L**imited (**P**arliamentary **A**rchives, HL/POJU/4/3/1088) in these words:

> '...The law is developed by the application of old principles to new circumstances. Therein lies its genius. Its reform by the abrogation of those principles is the task not of the courts of law but of Parliament'.

Circumspectly, an application of old rules and principles of law to new circumstances, should not be interpreted as a usurpation of the Legislature's power of law making; or that of the RCC, to expressly modify the rules of evidence and procedures to reflect modern trends; or that of the Chief Justice, pursuant to Order 62, Rule 1 of the HCR, 2007; to make practice directions; which are in themselves the exercise of statutory powers; as that of the Courts in interpreting such statutory

powers. Nevertheless, unlike Sierra Leone, the other states in the Commonwealth jurisdiction that have championed the course of getting litigants to attend judicial proceedings via VCF, have specific provisions in their rules of evidence and procedures, supporting that procedural judicial revolution.

However, in tandem with the trend in the Commonwealth jurisdiction, even though there is no expressed provision in The HCR, 2007, supporting the elicitation of evidence via VCF, I find succour in giving credence to the application of 28th January, 2019, by impliedly relying on Order 30 Rule 1 (1) of the High Court Rules, 2007. The essence of the rules of evidence in this context, is to ensure a fair and expeditious disposal of any cause or matter (economy of time) and to save cost; having regard to all the circumstances of every case, including but not limited to the factual circumstances, contemplated between Paragraphs (a) and (c).

Undeniably, it should be borne in mind that the essence of our rules of evidence and procedures, is to realise the ideals of justice. A fundamental feature of justice is that it is a two edged sword. Judicially, it has to be approached judiciously through lenses coloured by the perspectives of the parties to every litigation. This even presupposes, that to justly, fairly and reasonably determine any application, the

peculiarity of the facts that underpin it, must be comprehensively explored in a way that does not disadvantage any of the parties.

Guided and Guarded by this fundamental attribute of justice, I will say that the peculiarity of the facts, collectively deposed to in the foregoing affidavit, the needful is for the Plaintiff and his witness to be allowed to attend the proceedings via VCF. This is exactly what the justice of this case deserves; for it is practically impossible to get them to attend the trial in persons, as articulated in the said affidavit. By allowing them to attend the trial via VCF, they would not complain that they have not been given the opportunity to be heard, or present their case; neither would they say they are denied access to justice; nor would they say that the rule of law is not being fairly upheld in Sierra Leone.

Against this backdrop, from the perspective of the Defendant, he has not presented any tangibly convincing reason, regarding why the order should not be granted in the interest of justice; neither have I seen any actual or potential injustice, which he would suffer, should the order be granted; nor can he convince me that such an order has never been granted by the High Court of Justice of Sierra Leone, when The Hon. Justice Komba Kamanda's ruling on the same application, has not been overturned, pursuant to any interlocutory appeal in the Court of Appeal of Sierra Leone.

However, the procedure in Order 32, would not lead to a fair and expeditious disposal of this matter in a bid to save time and cost and in the interest of justice; as envisaged in the evidential rules, rationalised in Order 30 Rules 1, 2 and 5. Simpliciter, I am in concurrence, with Counsel for the Plaintiff that the Order 32 procedure would not apply to this case. If that procedure were to be invoked, then the testimonies of the Plaintiff and his witness, should be taken in England in the presence of either an examiner or a Judge. Alas! A fundamental difficulty that underscores this procedure is how can Counsel for the Defendant cross-examine the deponents? Would she go to London to do so? Further, should the Order 32 procedure be invoked, the examiner would be paid for his invaluable services; and should Counsel wish to conduct any cross examination, she would have to go to England to do so.

This will no doubt occasion lots of time and cost. Therefore, permitting the said witnesses to testify via VCF, even if their testimonies run for up to a month, the processes will be still very cost effective. Again, given the fact that the landscape and resources of information and communication technologies, are on the surge on a global scale, I am sure the evidence can be effectively elicited via VCF without any difficulty. And Counsel for the Defendant will be procedurally allowed to conduct her cross-examination for as long as she wishes. There will as well be a room for re-examination, should the need arise.

Nonetheless, order one, which is not being contended, is for the restoration of the summons for direction, dated 4th June, 2014. That order had since been perfected and has been presented to this Honourable Court (for purposes of this application) as Exhibit A. The eighth order in the foregoing summons for direction, concerns the liberty to restore the summons for further direction. There is no contention on the grant of this order for the expeditious trial of this action.

Therefore, having carefully considered the merits and demerits of the application; against the backdrop of the provisions in The HCR, 2007 and the persuasive authorities in Sierra Leone and the Commonwealth jurisdiction, I hereby make the following orders:

1. That the summons for direction herein dated 4th June, 2014 is restored for the expeditious trial of this matter.
2. That the Plaintiff (Issam Idriss) and witness (Ann Bunce Linsell) residing in England, United Kingdom, are directed to attend the proceedings via VCF; subject to the following conditions:
   a. A complete agreed bundle of documents is to be served on the Plaintiff and his witness aforesaid in their respective place of business in England, United Kingdom.

b. The Plaintiff and Defendant are permitted to have legal representatives at the VCF, through which the evidence will be elicited.

c. The costs of the bundle and attendance of the Defendant's legal representative at the facility shall be borne by the Plaintiff.

d. The VCF shall be set up and tested three days, prior to the commencement of the trial.

e. The cost of this application shall be cost in the cause.

The Hon. Dr. Justice Abou B. M. Binneh-Kamara, J.

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b. The Plaintiff and Defendant are permitted to have legal representatives at the VCF, through which the evidence will be elicited.

c. The costs of the bundle and attendance of the Defendant's legal representative at the facility shall be borne by the Plaintiff.

d. The VCF shall be set up and tested three days, prior to the commencement of the trial.

e. The cost of this application shall be cost in the cause.

The Hon. Dr. Justice Abou B. M. Binneh-Kamara, J.

Justice of Sierra Leone's Superior Court of Judicature