E/S 156/201

IN THE MAGISTRATE'S COURT HOLDEN AT FREETOWN

(CIVL SUMMONS)

BETWEEN: -

BENEFICIARIES OF THE ESTATE OF ALIE B. SESAY (DECEASED INTESTATE) **-APPLICANTS/RESPONDENTS**

AND

ALL OCCUPANTS OF NO.14 CAREW STREET **-RESPONDENTS/APPLICANTS**

COUNSEL

I.TURAY-ESQ COUNSEL FOR THE RESPONDENTS/APPLICANTS

J. BENJAMIN (MS) COUNSEL FOR THE APPLICANT/RESPONDE

BEFORE THE PRESIDING MAGISTRATE HADIRU DABOH

DATED THE 1st DAY OF AUGUST, 2022

This NOTICE OF MOTION is dated the 9th day of May, 2022, filed for and on behalf of the RESPONDENTS/APPLICANTS, by FODAY MANSARAY of L. DUMBUYA AND ASSOCIATES, for STAY OF PROCEEDINGS, and the Judgment dated 12th November, 2021 to be SET ASIDE.

I, Turay Esq., Counsel for the Respondents/Applicants argued as follows:

1. That his Clients were never served any document of the proceedings of this Court
2. That his Clients are not Tenants to the Applicants/Respondents
3. That 1st & 2nd Respondents/Applicants are beneficiaries of the Intestate Estate of Alie B. Sesay.
4. That his Application is made pursuant to Order 14 Rule 1 of the Magistrates' Courts Civil Procedure Rules, 1966, and Order 23 of the High Court Rules, 2007, for amendment, and to be heard notwithstanding that the 6 days Notice has elapsed, Pursuant to Order 2 of the Magistrates' Court Civil Procedure Rules, 1966.

J. Benjamin (Ms) in her Affidavit in Opposition, dated 12th May 2022 opposed the Application and the Affidavit in Support on the following grounds:

1. That the Respondents/Applicants were duly notified of the Pendency of the Action.

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2. That there were adjournment dates taken at the instance of the Respondents/Applicants before the Judgment dated 12th November, 2021.
3. That there was a Letter dated the 1st October 2021 addressed to the Respondents, thus notifying them about the date of the Judgment.
4. That referencing Order 14 of the Magistrates' Courts Civil Procedure Rules,1966, and Order 23 of the High Court Rules, 2007 was totally wrong in the circumstance.

Having read around their submissions, I asked myself the following questions:

a) Whether the (Order 14 and 23) referenced in both the Magistrates' Courts Civil Procedure Rules, 1966, and the High Court Rules 2007, really spike the thrust of his the instant case.
b) Whether the Respondents had notice of the pendency of the proceedings before the Judgment.
c) Whether the requirements in Section (7) subsection (4) Paragraph (3) of the Summary Ejectment Act, CAP 49, of the Laws of Sierra Leone 1960 were judiciously invoked.
d) Whether Section (9) of the Summary Ejectment Act is satisfied
e) Whether the amendment of the Notice of Motion Pursuant to Order 23 of the High Court Rules 2007, was really necessary and,
f) Whether the prayers are made in the actual Court.

In my opinion, Counsel for the Respondents/Applicants could have avoided that quandary if he had understood the rules. He made this Application pursuant to Order 14 of the Magistrates' Courts Civil Procedure Rules, 1966, and invoked Order 23 of the High Court Rules, 2007. The said Order 14 (GENERAL) is very simple, it says... where there are no provisions in the Magistrates' Courts Civil Procedure Rules, reference could be made to the High Court Rules, 2007, in so far they are not inconsistent with these Rules. Of course, there are provisions in the said Magistrates' Courts Civil Procedure Rules, 1966, good enough for the circumstance, but laziness could not allow one to properly canvass Order 9 Rules 2 and 5, and Order 13 (Enlargement of time) of the Magistrates' Courts Civil Procedure Rules,1966. He did not avert his mind to Section (9) of the Summary Ejectment Act, which talks about the eight days rule to appeal Judgment of a Magistrate, to give security for costs, and a bond or security in such a sum as the Magistrate shall deem sufficient against an act of damage or waste to the Premises. He did not also realise that he was in the wrong court arguing for determination on BENEFICIAL INTEREST and/or Title. Counsel did not even read the Court Records to understand proceedings leading to the pronouncement of the Judgment. He could not appreciate that several adjournments were taken at the instance of his clients, and that one of the Respondents/Applicants is a beneficiary of the Judgment, dated 12th November, 2021.

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In my view, the Respondents/Applicants had two possible courses of action open to them. Firstly, they could have appealed against the Judgment within the stipulated time, and then later amended that Notice of Motion, pursuant to Order 9 Rule 5 of the Magistrates' Courts Civil Procedure Rules, 1966. Secondly, since out of time, counsel could have approached the Court for an enlargement of time. None of these paths were taken. The Judgment was delivered on the 12th November 2021. The Notice of Motion dated 9th May 2022, was filed out of time, on the face of it Counsel did not pray for enlargement of time, nor did he even ask for amendment, and to be within the law; time within which to appeal the Judgment, must first be enlarged. He erred in all, so setting aside this Judgment, and enlarging time, within which to appeal, as provided in the Summary Ejectment Act, will amount to an abuse of these sacred rules and procedures, that is, to act gratuitously.

This Court will fall for the persuasively decision in **Auto Import v. Adebayo & Others SC49/1997** where the Learned Judge said::

> *"…….failure to file an appeal within the statutory period of time prescribed by law without obtaining an extension of time within which to give appeal in accordance with the statutory requirements which are conditions precedent to the filing of a valid appeal constitutes a grave irregularity, so fundamental that there would be no appeal which the appellate court could lawfully entertain. Such irregularity can by no means be regarded as a mere technically but constitutes an incurable defect that must deprive the appellate court of jurisdiction …"*

There is no doubt that this Court has the power to enlarge the time within which to appeal. This will only be exercised in a fitting case. Most Courts have resisted the pull of introducing outcomes different from that which the parties actually prayed for on their Applications. These Applicants did not specifically pray for enlargement of time and amendment on their Notice of Motion. To grant both in the circumstance will significantly undermine the time limits fixed by the rules, and will open the flood gates for laziness.

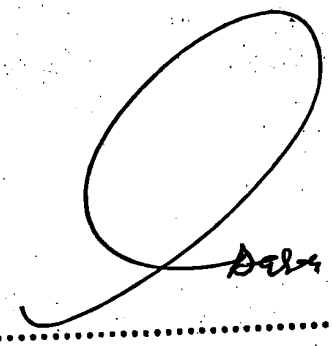
I cannot agree more with the Dissenting opinion of Hon. Justice Reginald Fynn JA. in the Matter of the Estate of Khalilu Jabbie (Represented by Mr . Bockarie Ensah as Court Appointed Administrator of the Estate of the deceased Khalilu Jabbie) v Syke Bank (SL) Limited, dated 29th February, 2016 where he said … filing out of time without first seeking for enlargement of time is major and it is a foundationally failure.

This court would Strike Out the Notice of Motion dated 9th May, 2022. The rest of the Orders prayed for on the face of this Application would need no further attention as there is no subsisting appeal.

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I therefore order as follows:

1. **That the** Notice of Motion dated 9th May 2022 is Struck Out.
2. **Cost of** Le 5,000,000/00 Old Leones be borne by the Applicants.



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MAGISTRATE HADIRU DABOH
COURT NO. 3
ROSS ROAD
FREETOWN

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