Mag. App 95/19

In the Appellate Division of the High Court of Justice of Sierra Leone

(Land and Property Division)

Between:

Christian Junior Langley -- Appellant/Respondent

Off Peninsular

Circular Road

Tombo Village

And

Ramatu Kabba -- Respondent/Applicant

(Through Her Lawful Attorney

Harun E. Sesay)

Freetown

Counsel:

Isaac David Babatunde John Esq. for the Appellant/Respondent.

Samuel Momodu Konteh Esq. for the Respondent/Applicant.

Ruling on a Preliminary Objection to the Contents of the Notice of Appeal, Dated 13th December, 2019, Delivered by The Hon. Dr. Justice Abou B. M. Binneh-Kamara, on 29th March, 2022.

1.1 Th Background to the Preliminary Objection.

When this matter first came up for hearing on the 24th March, 2020, I.D.B. John Esq. immediately moved this Honourable Court on the contents of a Notice of Appeal, dated the 13th day of December, 2019. Counsel emphatically stated that

LANBUK.COM LANBUK SIERRA LEONE

his client's case is predicated on the final decision of Magistrate Ladonnet Macaulay of the Headquarters Judicial District, Waterloo, Western Area Rural, in the Republic of Sierra Leone, in respect of her Judgment of 11th July, 2019; noting that his grounds of appeal are clearly articulated in the Notice of Appeal. He furthered that the reliefs which the Appellant seeks of this Honourable Court, are clearly stated in Ground III of the Notice of Appeal. Counsel reiterated that his client is in possession of a title deed in respect of the realty, from which he has been evicted; adding that such a title deed was exhibited in the Notice of Motion, dated 20th September 2019, which was moved before His Lordship Justice A. K. Musa. However, since the Notice of Appeal was being moved in the absence of Counsel on the other side (Samuel Momodu Konteh Esq.), this Honourable Court could not allow I.B.D John Esq. to proceed beyond this point; emphasizing that it would be judiciously expedient for the application to be completely moved in the presence of Counsel on the other side. The Court therefore made an order for a notice of haring to be sent to the absent Counsel.

Consequently, on the 31st March 2020, when the hitherto absent Counsel appeared, he confirmed to this Honourable Court, that he was going to take a preliminary objection to the Notice of Appeal that was being moved by the other Counsel, who was also absent on that other day. Meanwhile, on the 12th November 2020, both I.D.B John Esq. and Samuel Momodu Konteh Esq. were present; and the latter requested for an adjournment to go file a notice of intention to raise a preliminary objection to the contents of the papers filed by the former. Thus, the adjournment as requested was accordingly granted. Moreover, on 19th November 2020, Samuel Momodu Konteh Esq. moved the Court, pursuant to Order 46 Rule 10 of the High Court Rules, 2007 (hereinafter referred to as The HCR, 2007) on the contents of his notice of intention to raise a preliminary objection, dated 16th October 2020 to the Notice of Appeal, dated 13th December, 2019, filed by I.D.B John Esq. The said provision in The HCR, 2007 which concerns conditional judgment waiver thus states:

> **A party entitled under any Judgment or order to any relief subject to the fulfilment of any condition who fails to fulfil that condition is deemed to have abandoned the benefit of the judgment or order, and, unless the court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or**

LANBUK.COM LANBUK SIERRA LEONE

might have been taken if the judgment or order had not been given or made.

Essentially, in accordance with the aforementioned provision, Samuel Momodu Konteh Esq. submitted that the Appellant cannot benefit form Justice A.K. Musa's judgment, because he has not complied with all the conditions therein. However, when this Honourable Court examined the contents of the notice of intention to raise the preliminary objection, it reckoned that the Judgment of Justice A. K. Musa, that was being referenced by Counsel, was not at all exhibited. On that note, the Court ordered that the said Judgment, should be accordingly filed and exhibited, if it is to form the basis of the preliminary objection, that was to be raised. Nonetheless, this order was thus subsequently complied with and this Honourable Court proceeded to hear the contents of the preliminary objection.

1.2 <u>The Preliminary Objection and the Response Thereto.</u>

The preliminary objection is rationalised in the following points:

1. That the Appellant has failed to fulfil all the conditions of the orders of the Learned Hon. Mr. Justice A. K. Musa J. dated 10th December 2019, and therefore is deemed to have abandoned the benefits of that Judgment or order pursuant to Order 46 Rule 10 of The HCR, 2007. Attached is a copy of the said Judgment marked Exhibit SMK1.
2. That the Appellant did not serve on the Respondent the filed Notice of Appeal within seven (7) days of that order.
3. That the Appellant did not exhibit in his Notice of Appeal dated the 13th December 2019 any evidence of deposits into the Judicial Sub-Treasury as security for costs of the appeal, same which should have been done within seven (7) days of the orders of the Learned Hon. Mr. Justice A. K. Musa J. dated 10th December 2019.

Contrariwise, I.B.D. John Esq. filed an affidavit, repudiating the foregoing grounds, upon which the preliminary objection is predicated. Paragraph 4 of the said affidavit, denies the first objection that the Appellant has not complied with the conditions of the Judgment of the Learned Hon. Mr. Justice A.K. Musa, J., dated 10th December 2019. Paragraph 5 recounts the processes, pursuant to which the said Judgment was obtained; and how it culminated in the leave which was granted to the Appellant, to file his appeal (within seven days) out of time and

LANBUK.COM LANBUK SIERRA LEONE

how the stay of execution of the Judgment of Magistrate Ladonnet Macauley, dated 11th July 2019, was obtained. Paragraph 7 articulates the point that the Notice of Appeal, which is the basis of this present matter, before this Honourable Court, was lodged in the Registry of the Appellate Division of the High Court of Justice, on the 13th December, 2019. Paragraph 8 states that every effort was made to serve the Notice of Appeal on Counsel for the Respondent at his last known address of service, but it was evident that he was no longer doing business there. Paragraph 11 categorically denies the Third Ground of the objection; and states that the Judgment of the Learned Hon. Mr. Justice A. K. Musa, does not say anything that the evidence of payment of the security for cost shall be exhibited.

Nonetheless, Samuel Momodu Konteh Esq. swore to and filed an affidavit in reply, dated 16th December 2020, responding to the contents of the aforementioned affidavit in opposition. Paragraph 2 of the said affidavit (in reply), states that it is not in contention that the Appellant did not file the Notice of Appeal within the time, conditionally imposed by the Judgment of the Learned Hon. Mr. Justice A.K. Musa, J. Paragraph 3 emphasizes the point that the Appellant did not serve on the Respondent the filed Notice of Appeal within seven (7) days of that order and that it was on the 20th December, 2020 at exactly 10:40 o'clock in the forenoon that Counsel attempted to abruptly serve the said process on him. Paragraph 5 furthers that the Appellant did not exhibit in the Notice of Appeal, any evidence of deposits into the Judicial Sub-Treasury as security for costs of the appeal. Paragraph 6 confirms that a letter was written to the National Revenue Authority (NRA) on the 11th December 2020, and the search revealed that payments were accepted, but that the Court should summon an official of the NRA to come before it and attests to those facts.

1.3 The Analysis.

The jurisprudence on preliminary objection has continued to evolve, with a plethora of decided cases in Sierra Leone and the Commonwealth jurisdiction. The cardinal principle, by which every preliminary objection is anchored, is distilled from the idea, that a preliminary objection must raise a point of law; if it is to be heard and determined by any court of competent jurisdiction. The following cases are clearly instructive on this point: Taakor Tropical Hardware Co. Ltd. **v.** The Republic of Sierra Leone (ECW1 CCJ/JUD/02/19 (2019) ECOWAS CJ1 (24TH January, 2019); Zaria Amira Amina Mara **v.** Managing Director Standard

LANBUK.COM LANBUK SIERRA LEONE

Chartered Bank and Others (FTCC 237 of 2018) (2019) SLHC 47 (11 July 2019); Yaya **v.** Obur and Others (Civil Appeal 81 of 2010) (2020 UGHC 165 (30 October, 2020); Kassam Kousa **v.** Alie Basma (CC:215/2019/C N0.31); Lovetta Bomah and Others **v.** PMDC (cc306 of 2018) 2021 SLHCL PED 27 (16 March, 2021); S **v.** Joseph Saidu Mans. and Another (CC: 31 of 2018 2021 SLHC LPED 27 (16 March, 2021). In fact, a preliminary objection is not a preliminary objection, if it is based on facts, which evidential significance, can obviously be determined during the course of the proceedings. Thus, when heard, a preliminary objection can either be disposed of immediately; or its ruling may be deferred, in circumstances wherein its determination, will undoubtedly impact the outcome of a matter {see Yaya **v.** Obur and Others (Civil Appeal 81 of 2010) (2020 UGHC 165 (30 October, 2020}. However, the preliminary objection, on which this ruling is based, is bound to be heard, because it is clearly predicated on law (not on facts); and should be immediately determined, because the legal issues that characterize it, would have no impact on the outcome of this appeal, should it proceed to its logical conclusion.

Thus, for ease of reference, the provision as referenced in The HCR 2007, in justification of the grounds of the preliminary objection, is set out above, under the rubric: 'The Background to the Preliminary Objection'. Nonetheless, in the foregoing paragraph, which merely replicates the first ground, it appears that Counsel for the Respondent/Applicant, is saying that counsel on the other side, has not complied with **all** the conditions in Exhibit SMK 1, so the Notice of Appeal, dated 13th December2019, should not be heard. This ground is considered unreasonable and unacceptable in the light of what the said Counsel himself acknowledges in a point which he makes quite salient, in Paragraph 2 of the affidavit in reply (to the affidavit in opposition), that it is not in contention that the Appellant did not file the Notice of Appeal within the time, conditionally imposed by the Judgment of the Learned Hon. Mr. Justice A.K. Musa, J. Thus, it is clear from the content of Exhibit IDBJ1, that leave was granted for an extension of time to seven (7) days, from the date that the Hon. Mr. Justice A.K. Musa, J. made the said order, that the Appellant Respondent, shall file a Notice of Appeal to the Appellate Division of the High Court Registry.

This was accordingly done and there is indeed no contention on this issue. However, if there is no contention on the fulfilment of this condition precedent, which is embedded in the order, why should Counsel for the Respondent/Applicant say **all** the conditions in the order were not complied with? What is the semantic value of the word **all**? Does fulfilling a condition precedent,

LANBUK.COM LANBUK SIERRA LEONE

of a court's order not amount to a partial compliance of that order? Does a partial compliance mount to a non-compliance at all?

This Bench does not really think that the use of the word **all** in this context is right; it rather obscures the clarity of what is intended. Thus, ideas are expressed by words as the tools of thought. Therefore, Counsel for the Respondent/Applicant, should not therefore be that loose with language in an application of this nature. Further, the second ground of the objection that Counsel for the Appellant/Respondent did not serve the filed Notice of Appeal within seven (7) days of that order, appears very contentious in the circumstance. First, Paragraph 8 of the affidavit of Counsel for the Appellant/Respondent states that every effort was made to serve the Notice of Appeal on Counsel for the Respondent/Applicant at his last known address of service, but it was evident that he was no longer doing business there. Secondly, the two succeeding paragraphs to paragraph 8 demonstrate that every effort was made to serve the Notice of Appeal on Counsel for the Respondent/Applicant, before he was seen at the Pademba Road Magistrate's Court, where he was eventually served.

Thirdly, Counsel for the Respondent/Applicant debunks most of these facts in his affidavit in reply to the affidavit in opposition, saying that he was forced to accept service in the precincts of a court of competent jurisdiction, when the law does not permit that. Thus, the law does not in any way sanction that court processes, regarding criminal and/or civil proceedings are to be served in the precincts of any court. That is trite law. However, in practice, out of courtesy and deference for colleagues in the legal profession, couple with the fact that practitioners are always constraints by time, this Bench has seen practitioners, exchanging mostly processes, relating to civil proceedings in court by mutual consent. The fact that Counsel for the Appellant/Respondent could not locate Counsel for the Respondent/Applicant in his last known business address to effect service, after the order was made, in the interest of reasonableness and mutual respect for each other, the latter should have accepted service, when approached at the Pademba Road Magistrate's Court. That would have solved the complexity of the issue of service, which Counsel for the Respondent/Applicant is now raising.

On this point, this Bench believes that upholding this contention of improper service, when the Respondent/Applicant's Counsel could not be located in his last known address of service, will be unfair to the Appellant, who is also laying claim to the realty in question. So, if the preliminary objection is upheld on this point,

LANBUK.COM LANBUK SIERRA LEONE

an order for service, will have to be made and that will continue to forestall the progress of this matter. Nevertheless, Paragraph 11 of the affidavit in opposition, categorically denies the Third Ground of the objection; and states that the Judgment of the Learned Hon. Mr. Justice A. K. Musa, does not say anything that the evidence of payment of the security for cost shall be exhibited.

Thus, my perusal of Exhibit SMK1, containing the said order, confirms that indeed the said exhibit does not say that the evidence of payment of the security for cost shall be exhibited in an affidavit. Therefore, to say that the Notice of Appeal, should not be heard, because the evidence of payment of security for cost has not been exhibited is unacceptable; as that averment is not to be found on the face of that exhibit. Thus, if the security for cost as ordered has really been paid into the Judicial Sub-Treasury, this Honourable Court, can be ordered for evidence of that to be exhibited in a supplemental affidavit, to be filed by Counsel for the Appellant/Respondent. In fact, there is evidence that the security for cost has been paid into the Judicial Sub-Treasury. This is confirmed in Paragraph 6 of the affidavit in reply, which affirms that a letter was written to the National Revenue Authority (NRA) on the 11th December 2020, and the search revealed that payments were accepted, but that the Court should summon an official of the NRA to come before it and attests to those facts. Meanwhile, on the basis of the foregoing analysis, the preliminary objection is dismissed. And I make no order as to cost. Counsel for the Appellant/Respondent is at liberty to proceed with his Notice of Appeal on the next adjourned date.

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

Justice of Sierra Leone's Superior Court of Judicature

LANBUK.COM
LANBUK
SIERRA LEONE

However, the first issue which is contention is Paragraph 3 emphasized the point that the Appellant did not serve on the Respondent the filed Notice of Appeal within seven (7) days of that order and that it was on the 20th December, 2020 at exactly 10:40 o'clock in the forenoon that Counsel attempted to abruptly serve the said process on him