CC. 89/2018 2018 K. N0. 20

In The High Court of Sierra Leone

(Land and Property Division)

Between:

Fatima Mary Williams Koroma

Suing By Her Attorney Major Osman - Koroma MQ Room 51 Lungi Garrison Barracks Lungi Kaffu Bullom Chiefdom — Plaintiff/Respondent

And

Edward Junior Kamara- Benke Fullah Town Lungi Kaffu Bullom Chiefdom — Defendant/Applicant

Counsels:

M. P. H Sesay Esq. for the Plaintiff/Respondent

Elvis Kargbo Esq. for the Defendant/Applicant

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Ruling on an Application to Set Aside a Writ of Summons and All Subsequent Proceedings for Irregularities, Restoration of the Evicted Defendant/Applicant etc., Delivered on Tuesday, 2nd June, 2020, by Hon. Dr. Justice A. Binneh-Kamara, J.

1.0 Introduction

This is a ruling, consequent on an application made, by Betts and Berewa Solicitors, by way of a notice of motion, dated 25th October, 2019, for and on behalf of the Defendant/Applicant, to inter alia, set aside the writ of summons, dated 11th April 2018 and all subsequent proceedings, for irregularities; restoration of the evicted Defendant/Applicant etc. The application is supported by the affidavit of Edward Kamara, sworn to and dated the 25th October, 2019; with twelve (12) exhibits attached thereto. Contrariwise, on the 20th November, 2019, Musa Pious Sesay Esq., of Hermoh and Associates, deposed to and filed in an affidavit; containing nine (9) exhibits, depicting justifications, why the orders prayed for in the application of 25th October, 2019, should not be granted. Nevertheless, on the 14th November, 2019, Elvis Kargbo Esq., moved this Honourable Court on the foregoing application; with a very clear focus and dexterity.

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1.1 The Arguments of Counsel for the Defendant/Applicant

Meanwhile, relying on the Defendant's/Applicant's affidavit in support of the application, Counsel presented twelve (12) exhibits and bolstered his application with the following arguments:

1. The writ of summons dated 11th April, 2018, contravened Subsection (1) through (5) of Section 15 of the Local Courts Act N0. 10 of 2011. Counsel submitted that the contents of the writ is predicated on a declaration of title in respect of a property (realty) in the Provinces; for which the High Court of Justice has no jurisdiction.
2. The action is also instituted in contravention of section 21 of the Courts Act N0. 31 of 1965. The High Court of Justice has no jurisdiction over lands in the Provinces of Sierra Leone.
3. The Defendant/ Applicant was never served with all the requisite court processes in this action.
4. Both the writ of summons dated 11th April, 2018 and the order of the High Court of Justice dated 27th June, 2019, are contrary to the provisions of Rule 9 of Order 41 of the High Court Rules, 2007. Thus, the 28 days' notice, which is required by Order 41, was not served on the Defendant/Applicant.

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5. The Plaintiff/Respondent lacks capacity to institute this action. She is married to the Defendant/Applicant; who constructed the structure with the Plaintiff's/Applicant's assistance.

1.2 The Arguments of Counsel for the Plaintiff/Applicant

Circumspectly, M. P. H. Sesay Esq., relied on the affidavit in opposition of the Plaintiff/Respondent, sworn to and dated 20th November, 2019, in response to the application of 25th October, 2019. Counsel conscientiously attached five (5) exhibits to the said affidavit, which he alluded to in his submissions, debunking the reasons, why the application should be granted. The following constitute, the salient points of his arguments:

1. Contrary to the assertions of Counsel on the other side, the writ of summons dated 11th April, 2018, does not contravene Subsection (1) through (5) of the Local Court Act N0. 10 of 2011. He argued that the said provisions, relate to the jurisdiction of Local Courts on matters, concerning customary law; noting that Sections 16 and 17 of the statute, incisively justify the reason why this Honourable Court should not grant this application.
2. The argument that the action contravenes the aforementioned statute; and that matters concerning lands in the Provinces, cannot

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be handled by the High Court of Justice is wrong. In fact, section 21 does not expressly state that the High Court of Justice, does not have jurisdiction to determine title to land in the Provinces. On this submission, Counsel alluded to the Sitia Tribal Authority Case, without making any reference to where this authority can be located; and of what legal significance, is the said authority to the determination of this application.

3. The High Court of Justice has jurisdiction to preside over land matters in the Provinces, relating to the declaration of title to property, if a title deed is involved.
4. The application should be rejected, particularly because of the 3rd Order prayed for. The Defendant/Applicant is not the owner of the property; he does not have any subsisting interest in the property. And Counsel on the other side has not cited any authority in justification of why that order should be granted.
5. Counsel for the Defendant/Applicant has not shown how the writ of summons, contravened Rule 9 of Order 41 of the High Court Rules, 2007.

1.3 <u>The Analysis: Contextualizing the Law against the Backdrop of Counsels' Arguments</u>

In this analysis, I shall review the position of the law, in relation to the arguments, which both Counsels have sequentially canvassed; and

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simultaneously determine, whether the application, should or should not be granted. In doing so, I will reduce the central arguments of Counsels into seven thematic questions, which I will sequentially answer, consonant with the apposite judicial and statutory authorities; as they subsist in the existing legal literature. However, for ease of reference, I will answer the first and fourth questions from the standpoint of a singular analysis, because that analysis touches and concerns the principal thrust of both questions. The following constitute the central questions, which are discernible, from the argumentations and protestations of both Counsels (as catalogued above):

1. Has the writ of summons, commencing this action, been issued and served on the Defendant/Applicant in contradistinction of the provisions of Section 21 of the Courts Act N0.31 of 1965 (hereinafter referred to Act N0.31 of 1965)?
2. Has the said writ of summons, been issued and served on the Defendant/Applicant, in contravention of Subsection (1) through (5) of the Local Courts Act N0.10 of 2011 (hereinafter referred to as Act N0.31 of 1965)?
3. Do sections 16 and 17 of the aforesaid statute, clearly provide any justification for this Honourable Court to deny this application?

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4. Does the High Court of Justice have jurisdiction to preside over land matters in the Provinces, relating to the declaration of title to property, if a title deed is involved?
5. Was the Defendant/Applicant, served with the requisite court's processes in this action?
6. Do the writ of summons of 11th April, 2018 and the Court Order of 27th June, 2019, violate the provisions of Rule 9 of Order 41 of the High Court Rules, 2007?
7. Does the Plaintiff/Respondent, lack the requisite capacity to institute this action?

Essentially, regarding the first question, which absolutely concerns itself with the jurisdiction of the High Court of Justice, it is important to note that even though the Constitution (sections 132 and 134) of Sierra Leone, Act N0.6 of 1991 (hereinafter referred to as Act N0.6 of 1991), expressly provides for the original exclusive, appellate and supervisory jurisdictions, of the High Court of Justice; it is Act N0.31 of 1965 that the Courts can rely on for a thorough explication of its overwhelming civil jurisdiction; and the extent of its limitations. Sections 18 and 21 and the Third Schedule of the said statute, are very much instructive on this point.

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Meanwhile, whereas section 18 focuses on its unlimited jurisdiction, subject to certain exceptions; section 21 clarifies some of those exceptions, in the exercise of its original exclusive jurisdiction, on specific issues, relating to customary law, which has restrictive applicability in Sierra Leone. The Third Schedule however concerns itself with a plethora of thematic issues, from which a plethora of civil disputes can arise, that will never be litigated on by any Magistrate Court in Sierra Leone.

In effect, the said Schedule, amounts to a clear explication of the original exclusive jurisdiction of the High Court of Justice; hence it has to be read and understood in tandem with the provision of Subsection (1) of Section 132 of Act N0. 6 of 1991. Nonetheless, for purposes of the first question (raised above), section 21, which both Counsels, have accordingly referenced, cannot effectively simultaneously bolstered their positions in this acrimonious legal tussle. The section can only convincingly strengthen the argumentation of either Counsel, depending on how it is contextualised.

Moreover, my reading and understanding of Section 21 of Act N0. 31 of 1965 is this: The High Court of Justice, does not have original exclusive jurisdiction to preside over specific matters, relating to the determination of title to land situated in the Provinces, other than the title to a leasehold granted under the Provinces Land Act, Cap.122;

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neither can it establish the existence or dissolution of any marriage governed by customary law; or any claim, relating to any marriage, contracted under customary law; nor can it determine the administration of estates of deceased persons, where such administration is governed by customary law.

Furthermore, the foregoing interpretation dovetails with the explication of Sierra Leone's Supreme Court in Caulker **v.** Kangama (S.C Civ. App. 2/74, Judgement Delivered on 18th June, 1975, Unreported) on the issue of whether the High Court of Justice has jurisdiction to preside over matters of declaration of title to land in the provinces. In that locus classicus, Cole C. J, affirmed the indisputable legal position, rationalised in the aforementioned provisions that the High Court of Justice has no jurisdiction to preside over matters, relative to declaration of titles to land under customary law.

Essentially, the trial from which the appeal arose was thus declared a nullity by the then Chief Justice Cole; emphasizing the significance of the statutory exclusion of the jurisdiction of the High Court of Justice, on such matters. Therefore, in tandem with the foregoing Supreme Court decision, the decision in Sitia Tribal Authority **v.** Official Administrator of Intestate Estates (1937-49) A.L.R S.L.411.; which Counsel for the Plaintiff/Respondent, mentioned without citing the appropriate

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reference, where that authority can be assessed, is as inapplicable as the decision in Kamanda Bongay **v.** F. S. Macauley (1932) 1 W. A. C. A., 225.

Moreover, according to The Hon. Dr. Justice Ade Renner-Thomas, in his Land Tenure in Sierra Leone (2010: 31):

> The effect of this exclusion is that the role of the superior courts in the settlement of disputes involving question of title to land held under customary tenure in the Provinces is restricted to that of review on appeal. Since the bulk of land disputes that arise in the Provinces revolve around a question of title, this is a very significant limitation. The High Court has whenever possible, sought to justify its right to hear and determine land disputes, in its original jurisdiction, by making a distinction between matters which merely tough and concern title to land, such as an action for recovery of possession, and those which actually involve a declaration of title, or a determination of ownership, simpliciter, and are therefore excluded from its original jurisdiction under the provisions of section 21 of the Courts Act 1965.

Meanwhile, the foregoing explication is in tandem with the Court of Appeal's decision in Marie Kargbo (As Administrator of the Estate of Pa Murray (Moray) Kargbo (Deceased) Intestate **v.** Saio Turay, The

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Paramount Chief of Nongowa Chiefdom (Kenema District), The Presiding Magistrate (Kenema) and Ahmed Younes (Civ. App. 14/2006), which is also another locus classicus on how the Superior Court of Judicature, has handled the clear distinction between matters, concerning declaration of title to land in the Provinces, and other matters, relating to recovery of possession, cancellation of lease, cancellation of deed of assignments etc.

Meanwhile, a perusal of the writ of summons, dated 11th April, 2018, depicts that one of the reliefs prayed for, in that originating process, revolves around the declaration of title to property, outside the Western Area of the Republic of Sierra Leone. One of the Plaintiff's/Respondent's claims against the Defendant/Applicant is for 'A declaration that the Plaintiff is the owner and person entitled to possession of all that piece or parcel of land and hereditaments situate, lying and being at Benke Fuller Town, Lungi, Kaffu Bullom Chiefdom, in the Northern Province of the Republic of Sierra Leone'.

Thus, in tandem with the aforementioned analysis, it legally justifiable to conclude that Sections 18 and 21 of Act N0.31 of 1965, preclude the High Court of Justice, from granting the foregoing relief, which the Plaintiff/Respondent, is seeking from this Honourable Court, which lacks the requisite original exclusive jurisdiction, to determine any matter,

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relative to a declaration of title to any realty under customary law. Therefore, I will answer the first question in the affirmative. Further, I will, in the context of the above analysis, negate Counsel for the Plaintiff's/Respondent's submission that The High Court of Justice has jurisdiction to preside over land matters in the Provinces, relating to the declaration of title to property, if a title deed is involved. Against this backdrop, I will thus answer the fourth question in the negative. Meanwhile, the second question is not rooted on any critical analysis of any provision in Act N0.31 of 1965.

Rather, the question is founded on an incisive explication of the elaborate provisions in Subsection (1) through (5) of Section 15 of Act N0.10 of 2011. Purposefully, it is the foregoing statute that repealed and replaced, the Local Court Act N0.20 of 1963. The said Section 15 is invariably read and understood in tandem with Sections 18 and 21 of Act N0.31 of 1965. The principal thrust of Section 15 of Act N0.10 of 2011, is that the jurisdiction to hear and determine matters involving a question of title to land in the Provinces is expressly vested in the Local Courts as part of their general jurisdiction to hear and determine all civil cases governed by customary law.

Again, alluding to the first relief, which the Plaintiff/Respondent, prayed for, it is also legally justifiable to conclude that the writ of summons,

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dated 11th April, 2018, contravenes the provisions of Subsection (1) through (5) of Section 15 of Act N0.10 of 2011, which exclusively concerns itself with the general jurisdiction of Local Courts in the Sierra Leone Legal System. On the strength and precision of this conclusion, I will answer the second question in the affirmative. Moreover, regarding the third question, which purports is to determine whether Sections 16 and 17 of Act N0.10 of 2011, should provide an impetus for this Honourable Court to dismiss the application, I will rather first attempt to put both sections into context, and then eventually proceed to establish, whether they are sufficient enough to aid the determination of this application.

Section 16 reads:

> In addition to the jurisdiction conferred by section 15, the Chief Justice may, by statutory instrument, confer on a Local Court additional jurisdiction to enforce all or any of the provisions of any enactment.

And Section 17 reads:

> Subject to this Act and any Rules made under sections 55 and 56, the practice and procedure of the Court shall be governed by customary law.

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Constructively, whereas Section 16 restricts itself to the additional jurisdiction, which is vested in Local Courts; Section 17 concerns itself with the practice and rules of procedure in the Local Courts. Invariably, Section 16 should be read and interpreted in the context of the general jurisdiction of Local Courts, prescribed in Section 15. Textually and contextually, whereas the provision in Section 16 is **directory,** contemplating and depicting the circumstances, in which the Chief Justice **may**, by statutory instrument, confer jurisdiction on Local Courts to enforce the provisions of other statutes, Section 17 however makes it **mandatory,** that the practice and procedure of Local Courts, **shall** be governed by customary law.

Contextually, I see no nexus, between the purport of the said sections 16 and 17 and the unconvincing argument, which Counsel for the Plaintiff/Respondent, adduced in justification of why this Honourable Court, should discountenance the application of 25th October, 2019, which is the principal thrust of this ruling. Furthermore, concerning the firth question, which is germane to Counsel for the Defendant's/Applicant's submission that his client was not served with all the requisite court processes of this action, I will lend credence and succour to Counsel for the Plaintiff's/Respondent's argument; and negate the submission that the Defendant/Applicant was not served with the apposite court processes, relating to this action.

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The Court's records are quite clear enough to convince any skeptic or cynic or 'Doubting Thomas' that all the processes, emanating from the High Court Registry; or the High Court of Justice, were accordingly served on the Defendant/Applicant. The numerous affidavits of services in the file can attest to this truism. There is also irrefutable evidence, depicting that the orders (27th June, 2019 and 23rd August, 2019) of The Hon. Justices Alieu and Kamanda, were served on the Defendant/Applicant, alongside a letter written by M.P. H. Sesay Esq., informing him about the ruling of The Hon. Justice Kamanda (in particular), before The Hon. Justice Alieu, ruled on the ex parte notice of motion, dated 26th July, 2019.

Again, The Hon. Justice Alieu was so meticulous that, he got the process server (Abubakar Mansaray) to testify on oath, about how the service was done. On the basis of this irrefutably compelling evidence, I will therefore resort to answer the firth question in the affirmative. Meanwhile, my answer to the sixth question is contingent on the undermentioned analysis. Order 41 of the High Court Rules, 2007, focuses on proceedings at trial. The Order takes in a number of issues, including failure to appear by both parties, or one of them, how Judgement by default may be set aside, adjournment of trial, addresses to court, inspection by Judges, list of exhibits, custody of exhibits after trial, impounded documents and exhibits, proceedings after delay,

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striking out for delays etc. Alas! Rules 9 and 10, which are quite essential to this analysis, are thus set out as follows:

> Where 12 months have elapsed since the last step taken in any cause or matter, the party who wishes to proceed shall give to every other party not less than 28 days' notice of the intention to proceed.
>
> Where in any cause or matter no step has been taken for twelve months from the date of the last proceeding and no notice has been given under rule 9, the Master or any party to the cause or matter may apply to the Court for an order that the cause or matter may be struck out for want of prosecution.

Significantly, a legally incisive and constructive interpretation, of the above provisions, depicts that rules 9 and 10, are articulately interwoven and should be interpreted conjointly. Thus, whereas rule 9 is predicated on a condition precedent, based on a 28 day notice of intention to proceed, to be served on the other side, after a protracted delay of up to a year in any cause or matter; rule 10 pontificates the legal consequences of any breach of rule 9, ranging from imposition of cost (from the standpoint of the Court's inherent jurisdiction) to the striking out of such cause or matter for want of prosecution.

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This is exactly the purport of both procedural rules, embedded in Order 41 of the High Court Rules, 2007. My perusal of the records of this file, does not point to any fact that the aforementioned rules in the said Order 41 is negated by Counsel for the Plaintiff/Respondent. The matter really commenced on the 11th April, 2018. And every effort was made to proceed with it, up to the 15th April, 2019, when Elvis Kargbo Esq., of Betts and Berewa, entered appearance on behalf of the Defendant/Applicant. And the court's orders that evolved from the procedures and processes, commenced on the 11th April, 2018, were eventually handed down between the 27th June, 2019 and 23rd August, 2019.

There is nothing of evidential value on file, confirming that Counsel for the Plaintiff/Respondent, did not do anything to proceed with this matter for up to 12 months, at any point in time. Consequently, on this point, I would conclude that Counsel for the Defendant/Applicant, is being unreasonable, unfair and unjust; or at least misleading. Therefore, I will answer the sixth question on the negative. Furthermore, the seventh and final question, to be determined by this Honourable Court, is whether the Plaintiff/Respondent, lacks the capacity to institute this action.

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On this point, Counsel for the Defendant/Applicant, in Paragraph 8 through 13 of his affidavit, supporting the motion of 25th October, 2019, exhibited evidence, indicating that the Defendant/Applicant, is married to the Plaintiff/Respondent; and that the property belongs to the two of them {see Exhibits EK6, EK7(1-5), EK 8 (1-4) and EK9}. Contrariwise, Counsel for the Plaintiff/Respondent in his affidavit in opposition, sworn to and dated 20th November, 2019, denied the submission that the Defendant/Applicant is legally married to the Plaintiff/Respondent, but deposed to the following amusing and bemusing fact in the 'unnumbered Paragraph', found between Paragraphs 7 and 8 of the said affidavit:

> That the Defendant/Applicant and the Plaintiff/Respondent are not *married in the legal sense of the word (*my emphasis in italics*)*. The Defendant/Applicant deceived the Plaintiff/Respondent into the *purported marriage ceremony* (my emphasis in italics) so as to help the Defendant/Applicant to be taken to the United States. See paragraph 12 of the Defendant's/Applicant's affidavit. There is no registered married certificate.

However, Exhibit EK8, contains three (3) attachments, which are photographs, depicting a marriage ceremony, between the parties to this action. The photographs clearly show that the ceremony was being

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officiated by a man dressed in black. What is not discernible from the photographs is whether the marriage was contracted under customary law or not. However, the question of whether the aforementioned parties are married or not, is a serious contention, which is at this stage, not the business of this Honourable Court to determine. Nevertheless, Counsel for the Plaintiff/Respondent, has produced a registered conveyance (see exhibit MPS 1), justifying the reason, why he feels that the realty in question, exclusively belongs to his client. The Defendant/Applicant on the other hand, has exhibited a site plan in respect of the same realty in question (see Exhibit EK9).

And that site plan is in the names of both parties to this action. Nonetheless, what is important to note at this stage is that as pontificated above, the provisions in Sections 18 and 21 of Act N0.31 of 1965 and Section 15 of Act N0.10 of 2011, preclude the High Court of Justice, from determining any cause or matter, relative to the declaration of title to property in the Provinces. However, the issue of whether the Plaintiff/Respondent, lacks the capacity to institute this action, is in tandem with the jurisdiction, to determine the title to the realty in question, by the Local Court of Kaffu Bullom Chiefdom, which is a formal judicial institution.

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Essentially, on the basis of the foregoing analysis, I hereby make the following orders:

1. That this Honourable Court hereby sets aside the writ of summons, dated 11th April, 2018, the Court Orders, dated 27th June, 2019 and 23rd August, 2019, and all subsequent proceedings, for the following irregularities:
   i. That the writ of summons, dated 11th April, 2018 entitled CC89/2018 K. N0. 20, contravened Subsection (1) through (5) of Section 15 of the Local Court Act N0.10 of 2011.
   ii. That the writ of summons, dated 11th April, 2018 entitled CC89/2018 K. N0. 20, is in contradistinction of the provisions of Section 18 and 21 of the Courts Act N0.31 of 1965.
   iii. That this Honourable Court hereby orders that the Defendant/Applicant herein be restored at N0.3 Fullah Town Benke Lungi, Kaffu Bullom Chiefdom, in the Northern Province of the Republic of Sierra Leone.
   iv. That a cost of two million (Le 2,000,000) be paid by the Plaintiff/Respondent to the solicitor for the Defendant/Applicant in this action.

I so order.

The Hon. Dr. Justice A. Binneh-Kamara, J

2/6/2020

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