CC. 428/2020 2020 S. N0.35

In the High Court of Sierra Leone

(Land and Property Division)

Between:

Hawa Sillah

(As Administratrix of the Estate of Sheik S. Sillah ... 1st Plaintiff

Deceased Intestate)

Mr. Mohamed Juldeh Kanu ... 2nd Plaintiff

Mrs. Madeline Kanu ...

(By their Attorney Pa Alhaji Abdul Rahman Kamara ... 3rd Plaintiff

N0. 10P Thunder Hill Road, Kissy, Freetown)

AND

Mr. Lamin Jah ... 1st Defendant

Department of Transportation

Roadway, Raleigh North Carolina

5016 Cardinal Grove BLVD.

Raleigh, NC 27618

U.S.A.

Counsel S. M. Sesay, Esq. for the Plaintiff

Fatmata Sorie, Esq.

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Ruling on an Objection to an Application for a Leave to Amend the Contents of a Notice of Motion Via a Notice of Intention to Amend, Delivered by the Hon. Dr. Justice Abou B. M. Binneh-Kamara, on Tuesday, 18th January, 2022.

This ruling revolves around an objection, which Fatmata Sorie, raised on the 29th June 2021, against an application filed by S. M. Sesay Esq., seeking leave to amend the contents of a notice of motion via a notice of intention to amend. The principal thrust of Fatmata Sorie's ground of objection is based on the submission that the foregoing procedure, invokes by S. M. Sesay Esq. is wrong. Fatmata Sorie argues that she reckons that it is only a notice of intention seeking leaving to amend the notice of motion that is filed. She further submits that she would have expected to see on records an actual notice of motion, supported by an affidavit for the purported amendment to be done.

Contrariwise, S. M. Sesay Esq. draws the court's attention to the fact that Fatmata Sorie has not cited any authority, upon which this Honourable Court, can act in justification of her objection. He further argues that the procedure he invokes, is bolstered by a practice, which the Court of Appeal has sanctioned in the case of **Ibrahim Kamara Alias Ormunku v. Remeleku Tejan-Cole (Civil Appeal 2021)**. In reply, Fatmata Sorie contends that, unlike the Court of Appeal Rules[1], which empowers the said court to go to the High Court Rules 2007, in circumstances wherein the former rules do not contain provisions, relative to any procedure, the latter rules, do not contain such a provision. She emphasizes that Sub-rule 1 of Rule 7 of Order 23 of the High Court Rules 2007, which concerns amendments of certain documents other than pleadings, resolves the issue.

Meanwhile, it should be noted that there is no specific provision in the High Court Rules 2007, which specifically provides that to amend the contents of a subsisting notice of motion, the applicant shall file another notice of motion, supported by the apposite affidavit. Again, there is as well nothing in the said rules that says that to amend a subsisting notice of motion, one must file a notice of intention to amend, seeking leave of the court to do so. Nonetheless, is there any generic provision in the High Court Rules 2007, that will guard and guide this Honourable Court in resolving this contention?

[1] Rule 38 (2) of the Court of Appeal Rules, 1985.

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Significantly, Sub-rule (1) of Rule 7 of Order 23 of the High Court Rules 2007, which Fatmata Sorie alludes to in her submission, indeed concerns 'Amendments of Certain Documents Other than Pleadings'. The provision thus reads:

> **'For the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings, the court may at any stage of the proceedings and either of its own motion or on the application of any party to the proceedings order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct'.**

Analytically, the foregoing provision, regarding amendments of certain other documents other than pleadings, is not mandatory; it is one that is directory by virtue of the of the contextual auxiliary verb 'may' as used in a number of times in the provision. In the circumstance, the application for amendment is made by a party to this action, though the other party is objecting to the procedure that is invoked. Whilst unpicking the procedure, pursuant to which the application is made, I reckoned that it dovetails with a practice which the Court of Appeal indeed sanctioned in the aforementioned decided case.

However, even though this Honourable Court is not procedurally bound by such practice, by virtue of Sub-rule (1) of Rule 7 of Order 23 of the High Court Rules, 2007, it considers the applicant's counsel's procedure for amendment as just, fair and reasonable. Therefore, on the basis of the foregoing authority, this Honourable Court can thus accord the appropriate succour to it. I will essentially dismiss the objection and make no other as to cost.

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

18/1/2022

Justice of Sierra Leone's Superior Court of Judicature.

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