FTCC 012/21 2021 P. NO. 8

IN THE HIGH COURT OF SIERRA LEONE
COMMERCIAL AND ADMIRALTY DIVISION

BETWEEN

PRECON CONSULTING GROUP B.V. -PLAINTIFF

AND

THE ATTORNEY-GENERAL AND MINISTER OF JUSTICE AND OTHERS -DEFENDANT

RULING DELIVERED BY THE HONORABLE JUSTICE LORNARD TAYLOR ON THE 31STMARCH 2022

A. CONTEH -COUNSEL FOR THE DEFENDANT/APPLICANT

I. SORIE -COUNSEL FOR THE PLAINTIFF/RESPONDENT

Before this court is an application by Notice of Motion dated 22nd March 2022 filed by the Plaintiff/Applicant praying for the following orders;

1. A declaration that the order of this court dated 12th November 2021 is an interlocutory order and not a final order.
2. Costs
3. Any further or other order(s) that this honourable Court may deem fit and just.

The application is supported by the affidavits of Fatmata Sorie and Isaac D.B. John which said affidavits recited a history of the matter from its inception by writ of summons to the notice of appeal filed by the defendants on the 11th February 2022.

The defendants in opposition to the application also filed and relied on an affidavit in opposition deposed to on the 28th March 2022 by Aaron Mansa Conteh. This affidavit in effect highlighted that the defendants have appealed against the ruling of this court dated 12th November 2021 and that this application seeks to impugn the jurisdiction of the Court of Appeal.

On the 12th November 2021, this court in its ruling ordered that the plaintiff is at liberty to enter judgment against the defendant on the terms as contained in the said ruling. The defendant being dissatisfied with the ruling filed a notice of appeal on the 11th February 2022. The Plaintiff have

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approached this court for a determination of the question of whether its ruling of 12th November 2021 is final or interlocutory.

I agree that this question raised by the Plaintiff does have far reaching effects and as such its determination is quite crucial with respect to the progress of the matter. On one hand, if the ruling is interlocutory by its nature, it means that pursuant to the provisions of the Court's Act No. 31 of 1965 and the Court of Appeal Rules P.N. 29 of 1985, an appeal against same ought to have been by leave sought from this court within 14 days from the date of the ruling. Rule 10 (1) of the Court of Appeal Rules 1985 reads thus;

> *"Where an appeal lies by leave only, any person desiring to appeal shall apply to the court below or to the court by notice of motion within 14 days from the date of the decision against which leave to appeal is sought unless the Court below or the Court enlarges the time".*

If on the other hand the ruling is by its characteristics final, it means that the defendants are entitled to file their appeal against same within 3 months after the date of the ruling. Rule 11 of the Court of Appeal Rules 1985 reads thus;

> *"No appeal shall be brought after the expiration of fourteen days in the case of an appeal against an interlocutory decision or of three months in the case of an appeal against a final decision unless the Court enlarges the time".*

However, before I address the issue of the nature and characteristics of interlocutory and final judgments, I must first examine the basis and authority of this court to litigate on this application. This becomes necessary considering the assertion of counsel for the defendants that the Plaintiff's application seeks to question the jurisdiction of the court of Appeal

The ruling was delivered on the 12th November 2021. The Defendants filed an appeal against same on the 22nd February 2022 believing the ruling to be final and therefore not in need of the leave of the court to appeal against same and further believing themselves to be within the 3 months period as provided by the Court of Appeal Rules 1985.

The Plaintiff on the other hand considers the ruling of 12th November 2021 to be interlocutory thereby expecting the defendants to first seek the leave of the court to appeal against same within 14 days from the date of the ruling.

Based on the aforesaid and pursuant to Rule 29 of the Court of Appeal Rules 1985, this court is cloaked with authority to hear the present application for the purposes of determining the time within which an appeal may be brought. Rule 29 states thus;

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"Where any doubt arises as to whether any judgment or order is final or interlocutory, the question may be determined summarily by the court below or by the court and any such determination by the court below shall notwithstanding the provisions of rule 64 be deemed to be final and binding on all parties for the purposes of determining the time within which an appeal may be brought".

Having put to rest any doubt on whether this court has jurisdiction to hear and determine the present application, the only question now before this court is the determination of the issue of whether the ruling of 12th November 2021 is final or interlocutory.

This is indeed not a new phenomenon in the face of our courts and same have been decided on a number of cases. Of particular note is the ruling of the Supreme Court in the case of **Richard Zachariah v Jamal Morowah SC Misc. App. No. 2/87**. In that case, the Supreme Court applied the principle as laid in the case of Gilbert v Endean (1875) 9 Ch D. pg 263 at pg 269. There the learned Cotton LJ stated;

"those applications only are considered interlocutory which do not decide the rights of the parties, but are made for the purpose of keeping things in status quo till the rights can be decided, or for the purpose of obtaining some direction of the Court as to how the cause is to be conducted, as to what is to be done in the progress of the cause for the purpose of enabling the Court ultimately to decide upon the rights of the parties."

It seems to me quite clear that the principle to be applied is thus; where the ruling determines the rights of the parties finally and there is no other recourse available to the unsuccessful party but to appeal, the ruling is to be considered as final. It is interlocutory in nature where it does not finally determine the rights of the parties based on the prayers before the court.

In the present matter, the Plaintiff approached this court and sought leave to enter judgment in default of pleadings. The application was opposed by the defendants but was subsequently granted by the court by order dated 12th November 2021. This order I must emphasise is not the default judgment. It is the court granting leave to the Plaintiff to enter judgment. The plaintiff under the circumstances could have chosen not to enter the judgment and under certain circumstances could in fact even discontinue the action without leave of the court regardless of the order of 12th November 2021. Is an order of this nature, based on the above-cited yardstick final?

The order grants leave for a default judgment to be entered. It does not determine the rights of the parties based on the claims as contained in the

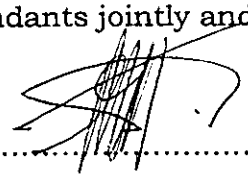
LANBUK.COM LANBUK SIERRA LEONE

writ of summons. Its purpose is communicating the *direction of the Court as to how the cause is to be conducted, as to what is to be done in the progress of the cause for the purpose of enabling the Court ultimately to decide upon the rights of the parties."* It does not bring the curtains down on the matter. It does not leave the defendants with no choice but to appeal. The claim remained unresolved as at the 12th November 2021 when the ruling was delivered.

The judgment that would determine the rights of the parties (though with its own inherent limitations considering that it is a default judgment) but the appeal is not against the judgment.

In the circumstances, I make the following orders;

1. The ruling of this court dated 12th November 2021 and the orders contained therein is interlocutory and not final.
2. The cost of this application is assessed at Le 10 million to be paid by the defendants jointly and severally to solicitors for the Plaintiff.



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HONORABLE JUSTICE LORNARD TAYLOR

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