CIVIL DIVISION

DAL ION RICHARDS -PLAINTIFF VS. SAIDU JALLOH & others - DEFENDANTS

PATRICK LAMBERT -For the PLAINTIFF OSMAN JALLOH - For the DEFENDANT

RULING DELIVERED THIS 19TH DAY OF MARCH 2009 BY DESMOND B. EDWARDS .J.

l.The plaintiff's solicitor has raised an objection to the tendering of and admission of the case file intituled in CS1990/07 respect of the matter between the INSPECTOR GENERAL OF POLICE VS SAIDU JALLOH which was about to be tendered by the Deputy Assistant Registrar in charge of Magistrates Court. The defendant in that criminal case which took place in 2007 in the Magistrates Court in the Judicial District of Freetown is the 1st defendant in the current civil proceedings in the Nigh Court of Sierra Leone.

PLAINTIFF'S SOLICITORS OBJECTION

2. The Plaintiffs solicitor objected on the grounds that the tendering of the case file as proposed containing oral evidence given by the witnesses in the Magistrates Court. statements and the decision of the magistrate, among other things, offends the provisions of SECTION 3 OF THE EVIDENCE AND DOCUMENTARY ACT CAP 26 VOL I OF THE LAWS OF SIERRA LEONE 1960. He relied on the case of HOLLINGTON VS HEWTHORN&CO LTD 1943 2 ALLER PAGE 35-45 CA where the issue of the inadmissibilily of evidence from criminal proceedings for civil proceedings was conclusively put to rest. The reason for this, he submitted relying on CROSS ON EVIDENCE 5™ EDITION AT PAGE 455-461 is that the prejudicial value out weighs the probative value. Applying the said principles to the case at hand, the plaintiffs

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3. In his reply, the defendant's solicitor submitted that what he was seeking to do did not offend against the provisions of Cap 26 of the Laws of Sierra Leone 1960. He submitted that he was only seeking to tender the records of the Magistrate Court proceedings, the reason being only to contradict one of the plaintiffs witnesses who had testified in the Magistrates Court and has staled in the current proceedings something different from what he said in the Magistrates Court. He submitted that to contradict this witness he could only do so by the records of that Court. He further submitted that they previously had copies of the record filed in the Court Bundle and served on the plaintiffs solicitor and tried to use same in the cross examination of the witness but the same was objected to and this Court upheld the objection on the grounds that those records were not made by the plaintiff. He relied on HALSHURY'S LAWS OF ENGLAND 3RD EDITION VOL 15 paragraph 714 under the rubric "When Depositions Are Inadmissible" and to the case of MANSARAY VS WILLIAMS 1968/69 ALRSL PAGE 326 PARTICULARLY AT PACE 330 to support the fact that you can use record in a previous proceeding to contract a witness.

IN ANSWER

4. In answer, the plaintiff's solicitor submitted that paragraph 714 relied on should not be considered in isolation from paragraph 713 which in effect details the conditions which would make evidence from a previous trial inadmissible.

5. I have considered keenly the arguments for and against the objection raised. In so far as the admission of the case file from the Magistrate Court is concerned, it would seem to me that the provisions of Cap 26 envisages such situations hence section 3 (1) i) (b). and I would disagree that the file is inadmissible under section 3 of Cap 26 . From time immemorial, case files of proceedings in Magistrates court or even of

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(this case is distinguishable from the MANASARAY CASE as it involves evidence from a criminal matter into a civil matter and not evidence from a civil matter into a civil matter), would seem to make the previous matter being a criminal trial inadmissible for the civil trial currently on. if it were to prove the culpability or otherwise of the defendant as it would be prejudicial and for the simple reason that the plaintiff herein was not a parly in the criminal mailer which was at the instance of the state; he had no opportunity to cross examine the witnesses; and those witnesses were called on behalf of the Inspector General of Police. That apart, the issues were different and finally the opinion of the magistrate contained in the decision of the magistrate inadmissible as he himself is not before this court in the civil proceedings as a witness to enable this court to cross examine him as to how he arrived at his decision, the soundness or otherwise. This confirms with paragraph 713 of Halsbury's laws of England which deals with those conditions which may cause a deposition to be inadmissible. The need for or use for such records however being made clear and which according to the defendant's solicitor is not to prove the in culpability of the defendant but only to contradict a particular witness PW3 and no more, it is but clear to me that the file could be admitted . The defendant's solicitor had previously tried to tender the

certified true copy during cross examination through that witness and it was held to be improper. I think therefore that a case has been made to put the file in evidence, But in order for it not 10 considered prejudicial to the current proceedings, I think i(is safe putting all the authorities into context, to hold that the certified true copy of the evidence given in the magistrate court, with respect to the matter intituled CS1000/07 between INSPECTOR GENERAL OF POLICE VS SAIDU JALLOH, by the particular witness, be tendered and the said witness be recalled for cross examination. This court so holds.

Hon Mr. Justice Desmond B. Edwards J.

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