

MAG. APP 26/2024

2024

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NO.11

IN THE APPELLATE DIVISION OF THE HIGH COURT OF SIERRA LEONE
(APPELLATE JURISDICTION)

BETWEEN:

MOHAMED KOSIA

- APPELLANTS

MR CHANDS

MR CHARLES

MADAM MUMY KAMARA

MR KOLIFA TAYLOR KAMARA

MR MOHAMED BANGURA

MADAM NAMINA

AMINATA KABIA

FREETOWN CITY COUNCIL

- APPLICANT
INTERESTED PERSON

AND

MOHAMED KEBE

- RESPONDENT

COUNSEL

T. KELLIE FOR THE APPLICANT INTERESTED PERSON

M.H. BANGURA FOR THE RESPONDENT

RULING

HONOURABLE MR. JUSTICE

ABDUL RAHMAN MANSARAY J.

6TH DAY OF OCTOBER 2026

The Application

1. Before this Court is a Notice of Motion dated 17th February 2026 brought by the Applicant Interested Person, Freetown City Council (FCC), seeking leave to be added as a party to the present appeal. FCC contends that the Appellants occupy the property situated at 69B Kissy Bye Pass Road, Kissy Samuels, Freetown under tenancies allegedly granted by FCC and that FCC is therefore the landlord entitled to the immediate reversion. On that basis, FCC submits that its presence is necessary to enable the Court effectually and completely to determine all issues arising in the appeal.
2. The application is supported by the affidavit of Tamba Kellie and opposed by the affidavit of Mohamed Hassan Bangura, learned counsel for the Respondent. FCC thereafter filed an Affidavit in Reply sworn by Tamba Gbewa Abu. Having carefully examined the Notice of Motion, the affidavits filed on both sides, and the applicable legal principles, I have concluded that the application is misconceived and ought to be refused.

The Background

3. The undisputed history of this matter is that the Respondent commenced proceedings under the Summary Ejectment Ordinance, Cap. 49, against the present Appellants before the Magistrate Court. The matter proceeded to full hearing. Both sides led evidence. Witnesses testified. Documents were tendered. A locus inspection was conducted. Thereafter, the Court delivered judgment on 12th November 2024 in favour of the Respondent.
4. Dissatisfied with that judgment, the Appellants lodged a Notice of Appeal on 19th November 2024. FCC was not a plaintiff, defendant, intervenor, interested party, or applicant in the proceedings before the Magistrate's Court. FCC now seeks, after judgment and after the appeal has been entered, to be joined as an Interested Person in the appellate proceedings. FCC's case is that the Appellants are its tenants, that FCC possesses a reversionary interest in the premises, and that any determination of the appeal may affect that interest.

The Issues for Determination

5. The application raises four principal questions: whether this Court, sitting in its appellate jurisdiction from the Magistrate Court, has the power to join a non-party after judgment in the court below; Whether Order 18 of the High Court Rules 2007 applies to appeals from the Magistrate Court. Whether FCC has standing to participate in this appeal. And whether the interests of justice require FCC to be joined.

Nature of an Appeal

6. The starting point must be a proper appreciation of the nature of appellate jurisdiction. An appeal is not ordinarily a fresh action. Nor is it an opportunity for persons who did not participate in proceedings below to enter the litigation after judgment has been delivered. The fundamental function of an appellate court is to review, affirm, vary, or reverse the decision appealed from based on the record lawfully created before the lower court.
7. As Lord Herschell observed in *Attorney-General v Sillem* (1864) 10 HLC 704, the jurisdiction of an appellate tribunal is generally confined to reviewing the correctness of the judgment appealed against. Likewise, the Privy Council in *Attorney General of Trinidad and Tobago v Matthews* [2011] UKPC 38 reaffirmed that an appeal is a continuation of existing proceedings rather than the commencement of entirely new litigation.
8. This Court is therefore not concerned with determining who ought originally to have been sued. Nor is it exercising original jurisdiction to determine proprietary rights between FCC and the Respondent. Rather, the Court is concerned with whether the learned Magistrate's decision was right or wrong on the evidence and issues presented before her Worship.

Whether Order 18 of the High Court Rules Applies

9. FCC relies heavily on Order 18 and the general principles governing joinder of parties. With respect, that reliance is misplaced. Order 18 is designed primarily for proceedings in the High Court exercising original jurisdiction. The rule enables the court to add

parties whose presence is necessary for the complete adjudication of issues arising in a subsisting action.

10. The difficulty facing FCC is that the substantive action has already been tried and determined. The proceedings before the Magistrate Court are no longer pending. Indeed, the very rationale underlying joinder at first instance is absent. The Court is no longer concerned with gathering all necessary parties before a trial. The trial has already occurred. I therefore accept the Respondent's submission that the provisions concerning joinder cannot simply be transplanted into appellate proceedings as though the matter was still awaiting trial. The question before this Court is appellate, not original.

Whether FCC Was a Party Below

11. It is common ground that FCC was not a party to the proceedings before the Magistrate Court. FCC's own affidavit admits this fact and indeed relies upon it as justification for the application. The significance of this fact cannot be overstated. The appeal before this Court exists because the parties before the Magistrate Court have invoked the appellate process. An appeal presupposes the existence of a judgment affecting the rights of the parties in the court below.
12. No judgment was entered against FCC. No relief was granted against FCC. No order was made requiring FCC to do or refrain from doing anything. No decree was issued against FCC. In short, FCC has nothing from which to appeal. The practical consequence is that FCC seeks not to prosecute an appeal but to enter an appeal already instituted by others. That is a fundamentally different proposition.

Whether FCC's Interest Was Already Before the Trial Court

13. An important feature of this case is that the very contention FCC now wishes to advance was canvassed at trial. The Respondent's affidavit establishes that witnesses associated with FCC testified during the hearing below concerning the alleged tenancy relationship between FCC and the Appellants. The learned Magistrate considered that evidence and made findings upon it.

14. According to the affidavit before me, the Magistrate concluded that the documents relied upon by the Appellants and FCC did not establish title or a legally effective tenancy relationship capable of displacing the Respondent's claim. Whether those conclusions were right or wrong is a matter for determination in the substantive appeal.
15. However, FCC's position was already before the trial court through witnesses and documents relied upon by the defence. This is therefore not a situation in which an entirely unheard claim would be excluded from the appellate process. The issue was already litigated.

Whether FCC Can Relitigate Through Joinder

16. The gravamen of FCC's application is that it claims superior title and a reversionary interest in the premises. However, appellate procedure cannot be used as a vehicle for introducing a fresh litigant seeking effectively to reopen factual disputes already adjudicated upon below. If FCC is joined, several questions immediately arise: Is FCC entitled to file further evidence? Is FCC entitled to advance grounds not relied upon below? Is FCC entitled to call additional witnesses? Is FCC entitled to produce documents not part of the record?
17. To permit such a course would fundamentally alter the nature of the appeal. The appeal would cease to be a review of the Magistrate's decision and would become a fresh trial involving a new party. That is not the function of an appellate court.

Adequate Representation of FCC's Position

18. A further difficulty with the application is that FCC has failed to demonstrate that its position is not already represented in the appeal. The affidavits disclose that the Appellants' defence before the Magistrate's Court was founded substantially on the assertion that they were tenants of FCC and not tenants of the Respondent. Indeed, the Respondent points out that the Appellants' grounds of appeal already encompass every material contention which FCC seeks to raise.

19. Consequently, even assuming FCC possesses an interest in the matter, that interest is already being advanced through the Appellants themselves. The Court therefore sees no practical gap in representation requiring FCC's intervention.

Delay

20. The chronology is also telling. Judgment was delivered on 12th November 2024. The appeal was entered shortly thereafter. FCC did not file its application until February 2026. The supporting affidavit offers no satisfactory explanation for this prolonged delay. The law places considerable value upon the finality of litigation. A successful litigant is entitled to expect that litigation will proceed toward conclusion and not continually expand through the introduction of new parties asserting interests that could have been advanced earlier.
21. Where a person had knowledge of proceedings and had the opportunity to protect its interests but chose not to intervene, the court must exercise great caution before permitting participation after judgment.

Interests of Justice

22. I accept that FCC may genuinely believe that it possesses rights in relation to the property. However, the question before this Court is not whether FCC has rights. The question is whether FCC should be added as a party to this appeal. Those are different inquiries. If FCC believes it possesses proprietary rights, landlord's rights, reversionary rights, or any other enforceable interest, nothing in this ruling prevents FCC from pursuing any remedy available to it under the law in separate proceedings.
23. What FCC cannot do is transform an appeal into a fresh forum within which to litigate rights that were not the subject of independent proceedings brought by it. The interests of justice in this matter favour finality of litigation, respect for the appellate process, avoidance of procedural prejudice, and maintenance of the distinction between original and appellate jurisdiction.

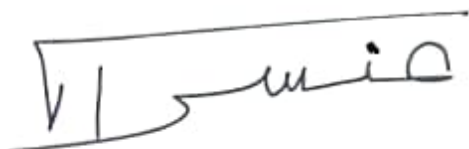
The Findings

24. Having considered all the affidavits and submissions before me, I find that FCC was not a party to the proceedings before the Magistrate Court. That no judgment or order was made against FCC. That the issues FCC seeks to advance were already canvassed before the Magistrate Court through the defence case. That Order 18 concerning joinder cannot be invoked to convert an appeal into a fresh trial involving a new litigant. That ~~the~~ FCC has failed to establish any legal basis warranting its addition as a party at the appellate stage. That the interests of justice favour determination of the appeal between the parties who litigated before the court below.

The Orders

25. Consequently, I hereby make the following orders

1. The Notice of Motion filed by Freetown City Council seeking to be joined as an Applicant Interested Person in this appeal is hereby refused and struck out.
2. The appeal shall proceed between the existing parties.
3. Costs of this application are awarded to the Respondent, to be taxed if not agreed.



HONOURABLE MR. JUSTICE
ABDUL RAHMAN MANSARAY J.