Neutral Citation Number FTCC 252/16 {2016) C26 (Fast Track Commercial Court)

Case No: FTCC 060/2017

IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN
FAST TRACK COMMERCIAL COURT

Law Court Building
Siaka Stevens Street
Freetown

Date: 3 May 2021

Before:

THE HONOURABLE MR JUSTICE FISHER J

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Between:

Mohamed Bangura **Plaintiff**

-and-

Dalian Shenghai Ocean Fishing Co **1st Defendant**
Mohamed Sabbah **2nd Defendant**
Sabco Fishing Company **3rd Defendant**

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ET Eloh for the Plaintiff
AS Sesay for the 2nd and 3rd Defendant
LM Baryoh for the 1st defendant

Hearing dates: 19,21,29 April 2021

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APPROVED ORDER

I direct that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE FISHER J

The Honourable Mr Justice Fisher J:

1. In pending proceedings before me in which the plaintiff sought by way of a notice of motion dated 1st March 2021 leave to amend the writ of summons dated 21st day of April 2017, in the manner underlined in RED on the proposed amended writ of summons, pursuant to Order 23 rule 5 of the High Court Rules 2007, I heard the application and ordered the plaintiff to serve copies of the application on the defendants which had not hitherto been served upon them. The matter was then listed for an inter partes hearing on the 19th April 2021.

2. If the task of judges were confined to trying the heaviest of cases, then that would be task enough. However, judges also have to deal unexpectedly with incidental matters, sometimes at short notice and at inconvenient times. This was vividly illustrated on the 19th April 2021 when arguments of counsel were being heard and I noticed there was a discussion ongoing between the counsel for the second defendant Mr AS Sesay and the plaintiff. Mr Sesay appeared to be disturbed and I noticed his countenance had changed. Shortly thereafter, Mr Sesay stood up and sought leave and informed me he had a serious issue to raise. I gave him leave and he then informed me that the plaintiff was threatening his life in open court and promised to deal with him as he made his submissions, in particular when he submitted that the matter should be struck out with costs.

3. I enquired from the plaintiff as to why he behaved in that way and he denied saying anything. I asked him again why he was lying as I saw his conduct with my own eyes. He continued to deny that he said anything. I then enquired from counsel B Koroma esq and he confirmed the threat made to Mr A S Sesay in open court. His lawyer, Mr ET Enoh stood up and apologised on his behalf and promised that he would admonish him as to his future conduct. As the plaintiff was not showing any remorse for his actions and denying his conduct which I witnessed in my presence, I decided that he should be immediately removed from the court room and taken into custody.

4. Upon his removal from the court, a large group of his supporters (numbering about 30) also left the courtroom, making several comments of a threatening

nature, in a bid to disrupt the court. Shortly thereafter, I was notified that the threat against Mr Sesay continued after he left the courtroom as he went to his car. He had to be rescued by law enforcement officers, within the precincts of the court. I decided at that stage that it was appropriate for the plaintiff to be kept in custody pending another hearing at which I will ask him again to explain his conduct and purge his contempt, by applying the inherent powers of the court.

5. On the 20th April 2021, Mr ET Enoh for the plaintiff approached me in chambers and pleaded for the release of his client to which I declined as the matter was listed to be heard the next day.

6. On the 21st April 2021, when the matter came up for hearing, Mr Enoh again appeared and pleaded for his client to be released. He acknowledged that his conduct was unacceptable and he had admonished him to conduct himself properly. He went further to say, that he had communicated to the plaintiff, and his supporters with regard to the attitude that is required of them when a matter is in court. He informed the court that the plaintiff and his supporters have undertaken to keep the peace and to exercise restraint with all court staff especially lawyers and that he will ensure the undertakings are respected right through to the end of proceedings.

7. The plaintiff for his own part apologised for his conduct and promised there would be no reoccurrence. Having being satisfied that the plaintiff was indeed guilty of contempt of the court, I decided to admonish him in the strongest terms and to remind him that lawyers have a right to come to court and carry out their duties and any attempt to threaten a lawyer whilst carrying out his lawful duties of his profession would not be tolerated. I decided to discharge him upon his lawyer's and his own assurances of future good conduct. He was admonished to act sensibly and await the outcome of court proceedings. He was then released. The matter was then adjourned for the 29th April 2021 for further proceedings.

The application for recusal

8. On the morning of the 29th April 2021, I received a letter from Enoh and Partners dated 28th April 2021, requesting me to recuse myself from the proceedings on the grounds that comments I made to the plaintiff during sentencing for his contempt of the court in threating the life of Mr AS Sesay of counsel, amounts to apparent bias against the plaintiff. It is rather disingenuous and rather audacious for counsel to write such a letter in the light of his admissions about the conduct of his client in open court, which does not mention the admonishment to his client to keep the peace, nor does it strike a proper and acceptable balance of the situation in the court at the material time. Notwithstanding, I consider it appropriate to give a full and considered ruling, for posterity.

Contempt of court

9. Contempt in the face of the court concerns "some form of misconduct in the course of proceedings, either within the court itself or, at least, directly connected with what is happening in court. The case law does not contain any comprehensive list of all forms of conduct which may amount to contempt in the face of the court, but in essence it is "conduct that denotes wilful defiance of, or disrespect towards, the court or that wilfully challenges or affronts the authority of the court or the supremacy of the law itself".

10. In Atkinson [2011] EWCA Crim 1766, the Court of Appeal stated "It is axiomatic that any judge in any court, not least a Crown Court, has to act appropriately to control proceedings to see that they do not get out of order". Similar sentiments were expressed in the following cases R v Pateley Bridge Justices ex p Percy [1994] Crown Office Digest 453 and in Chandler v Horne (1842) 174 ER 338.

11. In Morris v Crown Office [1970] 2 QB 114, 129, Lord Justice Salmon stated:

"the sole purpose of proceedings for contempt is to give our courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented". In the same case, Lord Denning had this to say: " "[o]f all the places where law and order

must be maintained, it is here in these courts. The courts of justice must not be deflected or interfered with. Those who strike it, strike at the very foundations of our society".

12. It is therefore the case that the issue of contempt of court is a very serious issue and such is the seriousness with which it is treated that, the framers of the 1991 Constitution included it in the constitution. Section 120 subsection 5 of the 1991 Constitution provides:

"(5) The Superior Court of Judicature shall have the power to commit for contempt to themselves and all such powers as were vested in a court of record immediately before the coming into force of this Constitution.

13. In the Morris case (supra)", the Court of Appeal stated that in order to maintain law and order (upon which freedom depends) the judges have a wide power "to deal at once with those who interfere with the administration of justice." At the time when I admonished the plaintiff to behave himself, it was clearly part of my sentencing remarks which I had to right to make, whilst passing sentence for contempt in the face of the court. I can see no sensible or logical basis for inferring that remarks made by a judge whilst passing sentence for contempt, amounts to bias on the part of the judge. I have concluded that if such a position were to be entertained, the administration of justice would collapse through lawlessness and indiscipline in the court, if judges were shackled by unfounded and unmeritorious allegations of bias in enforcing discipline in the courts. I shall now deal with bias.

Apparent bias

14. In Locabail (UK) Ltd v Bayfield Properties Ltd 1999, the House of Lords considered the basis on which judges could or should disqualify themselves from sitting on grounds of bias. The court distinguished the two rules relating to disqualification identified in the authorities. (i) Where the judge was shown to have an interest in the outcome of the case which he had to decide or had

decided (Dimes v The Proprietors of the Grand Junction Canal (1852) 3 HL Cas 759) he would be automatically disqualified. The question in this category was whether the outcome of the cause before the judge could realistically and directly affect the judge's interest.

15. In R v Bow Street Magistrates, ex parte Pinochet (No.2) (1999) 2 WLR 272 the House of Lords made plain that the rule extended to a limited class of non-financial interests. Since any extension of the automatic disqualification rule would also, inevitably, limit the power of the judge and any reviewing court to take account of the facts and circumstances of a particular case, and would have the potential to cause delay and greatly increased cost in the final disposal of the proceedings, the court would regard as undesirable any extension of the present rule on automatic disqualification beyond the bounds set by existing authority, unless such extension were plainly required to give effect to the important underlying principles upon which the rule was based. It was possible for a party to waive his right to object to the judge hearing or continuing to hear the case.

16. (ii) The second rule provided for the disqualification of a judge and the setting aside of a decision, if on examination of all the relevant circumstances, the court concluded that there was a real danger (or possibility) of bias (this test was settled in R v Gough (1993) 2 WLR 883). When applying the test of real danger or possibility (as opposed to the test of automatic disqualification), it would very often be appropriate to enquire whether the judge knew of the matter relied on as appearing to undermine his impartiality, because if it was shown that he did not know of it the danger of its having influenced his judgment was eliminated and the appearance of possible bias was dispelled.

17. The enquiry is directed to the question whether there was such a degree of possibility of bias on the part of the judge that the decision must not be allowed to stand. Each case must be considered on its own facts but most significantly the authorities reveal that cases of alleged bias frequently occur when it is alleged a judge has an interest in the outcome of the proceedings. In **Reg v Camborne justices, ex parte Pearce 1955 1 Q.B.41**, the court dismissed an appeal where the appellant alleged that a reasonable suspicion

of bias might arise where the clerk a member of the council acted as clerk to the Magistrate when deliberating on the case. The court took the view that mere suspicion of bias was not enough to be used as a warrant for quashing convictions or invalidating orders upon quite unsubstantial grounds and, indeed, in some cases, upon the flimsiest pretext of bias.

18. In *Reg v Barnsley Licensing Justice Ex parte Barnsley and District Licensed Victuallers Association,* the court held that in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself but they look at the impression which would be given to other people. The court was clear that there must appear to be a real likelihood of bias, surmising or conjecture is not enough. There must be circumstances from which a reasonable man would think it likely or probable that the judge would, or did, in fact favour one side unfairly at the expense of the other and that reasonable people might think he did.

19. From a review of the authorities, I consider the appropriate test is that set out in Gough (supra), in which Lord Goff stated the test in these terms: "Finally, for the avoidance of doubt, I prefer to state the test in terms of real danger, rather than real likelihood, to ensure that the court is thinking in terms of possibility rather than probability of bias. Accordingly, having ascertained the relevant circumstances, the courts should ask itself whether, having regard to those circumstances, there was a real danger of bias on the part of the judge, in the sense that he might unfairly regard with favour, or disfavour the case of a party to the issue under consideration by him". The court concluded that the real danger test is quite capable of producing the right answer and ensure that the purity of justice is maintained across the range of situations where bias may exist.

20. Having reviewed the letter sent by the solicitor for the plaintiff, there is nothing in that letter that presents a case (let alone an arguable case) of bias. A reasonable person cannot properly conclude that it is likely or probable that a judge acted unfairly in enforcing the law of contempt against a litigant who seriously attempted to interfere with the administration of justice by threatening the life of a lawyer in open court. A reasonable man would expect

that a judge should act very swiftly when the rule of law and the administration of justice is being undermined.

21. There is nothing in the letter from the solicitors that remotely raises the possibility of bias. To suggest bias is rather a fanciful proposition in the absence of any suggestion that that the judge has an interest in the proceedings. The only interest the judge had in the proceedings was to uphold the rule of law and punish the contemnor in accordance with the law.

22. I see no lawful basis for recusal and I decline to do so. I note that the solicitor for the plaintiff failed to appear in this court after sending the purported letter of recusal. An application has been made by counsel for the 1 and 2nd and 3rd defendants respectively. I am going to order notices to be sent out to the solicitor for the plaintiff to respond to the applications made by the solicitors for the defendants. If he does not appear in this court on the next adjourned date to respond to the application, I shall proceed to determine the applications by the defendants in his absence.

UPON HEARING L Baryoh and AS Sesay Esq of counsel for the defendants;

IT IS HEREBY ORDERED AS FOLLOWS:

1. That notices should be sent out to the plaintiff's solicitors advising him of the adjourned date.
2. That should the plaintiff or his solicitor fail to appear in this court on the next adjourned date, I shall proceed to determine the matter in their absence.
3. Costs shall be in the cause.
4. The matter shall be adjourned to 6 May 2021, for further proceedings.

The Hon Mr Justice A Fisher J

Justice A. Fisher J

Digitally signed by Justice A. Fisher J
Date: 2021.07.07 22:33:04 Z