C.C 45/10 2019 C. NO. 4

IN THE HIGH COURT OF SIERRA LEONE

LAND AND PROPERTY DIVISION

Between:

Arnold Carrol

A Beneficiary under the Estate - Plaintiff

Of Mr. Melbourne Arnold Carrol

(Deceased Intestate)

NO. 17 Heddle Street, Hastings

And

Mr. Francis Emmanuel Bannet - 1st Defendant

NO, 21 Wesley Street

Hastings

The Director of Surveys and Lands - 2nd Defendant

Ministry of Lands, Country Planning &

The Environment, Youyi Building,

Brookfields

The Administrator and Registrar General - 3rd Defendant

Roxy Building, Walpole Street, Freetown

Counsels: K. Thorley, Esq. for the Plaintiff

E. T. Koroma, Esq., for the Defendant.

Ruling on Applications on Notices of Intention to Cross Examine Affiants to Affidavits and for this Action to be Struck Out for Non-Compliance with Subsection (1) of Section 3 of the State Proceedings Act N0. 14 of 2000, Delivered by the Hon. Dr. Justice Abou Binneh-Kamara, on Friday, 12th February, 2021.

1.0 Introduction.

This ruling is consequent on three applications made by both Counsels for the Plaintiff and Defendant, G. K. Thorley Esq. and E. T. Koroma Esq. Thus, the latter Counsel, on 11th April, 2019, filed the first notice of intention to cross examine, Mr. Patrick Turay and Mr. Arnold Carrol, the deponents to the affidavits of 5th February, 2019 and 11th March, 2019, on the allegedly contentious and misleading facts that underpin their depositions. Thus, the said affidavits are accordingly attached to the notice of motion, dated 11th March, 2019, praying for a number of specific orders, including declaration of title to the property, for which the action is originally instituted, cancellation of a subsisting property survey plan and a conveyance, allegedly concerning the same realty, incisively described in the writ of summons and particulars of claim, assessment of damages and perpetual injunction. The second notice of intention to cross examine was filed by G. k. Thorley Esq., on the 14th may, 2019, because he is of the conviction that some of the facts, which the affiant to that affidavit (Counsel for the Defendant: E. T. Koroma Esq.)

deponed to, are contentious and erroneous and frivolous. So, he would want to ascertain their veracity. Nonetheless, on 22nd May, 2019, without filing any notice of motion, E.T. Koroma Esq. applied for the action to be dismissed or struck out for non-compliance of Subsection (1) of section 3 of the State Proceedings Act N0. 14 of 2000 (hereinafter referred to as Act N0. 14 of 2000). However, I will first deal with both notices of intention to cross examine the affiants to the aforementioned affidavits in tandem with the position of the law in our jurisdiction. Secondly, I will examine the legality of the application to dismiss or strike out this action, for non-compliance, with the aforesaid provision in Act N0. 14 of 2000. Thirdly and finally, I will accordingly determine all three applications, which have somewhat delayed the progression of this matter.

1.1The Notices of Intention to Cross-Examine the Affiants.

The facts in issue that are to be determined revolve around both the substantive and adjectival law. The substantive law creates rights and obligations. And adjectival law, which does not create rights and obligations, is the mechanism (rules of evidence and procedure), pursuant to which rights and obligations are enforced. Nonetheless, concerning the notices of intention to cross-examine, I will rely on the adjectival law (rules of evidence and procedure of our jurisdiction), to

discern them. The issues are evidential, because they generically relate to affidavits. And the centrality of the relevance and admissibility of affidavit evidence in civil proceedings cannot be overemphasized. Again, the issues are also procedural, because they concern whether there is a rule of procedure, preventing the court, from getting deponents to be cross-examined on facts deponed to, when the other side has refused or failed to file an affidavit in opposition, to the very affidavits, which contents are being challenged. Evidentially, every fact which is relevant to any other fact in issue is relevant and therefore admissible. However, notwithstanding its admissibility, the weight which a reasonable and credible tribunal of facts attaches to it, is what is much more important.

Meanwhile, the nature of civil litigations, requires much evidence to be adduced via affidavits. The complexities of civil litigations, inter alia, require the filing of a plethora of pre-trial motions, bolstered by the requisite affidavits, by both sides. In such circumstances, the courts will never be able to expeditiously and judiciously determine, such pre-trial motions, if they are not equipped with the apposite evidence, deponed to in such affidavits. Thus, because such applications are made before the commencement of the trials, it would be legally and even rationally expedient, to call witnesses to come testify on oaths. So, the facts that they deposed to, in their requisite affidavits, are of very serious evidential value. In tandem with the constitutional principle of 'audi

alteram partem' {see section 23 (2) of the 1991 Constitution of Sierra Leone}, the courts will never grant the reliefs prayed for without allowing the other side to present their case. This is the essence of filing affidavits in oppositions in circumstances, wherein the applications are made inter parte; but this is not the case in circumstances, wherein the courts are obliged to deal with ex parte applications.

Alas! Even when it comes to ex parte applications, the applicants are obliged to make full and frank disclosures of the undiluted facts that inevitably necessitate the applications to the courts, in order for them to be able to make fair, just and reasonable judgements, on such applications, which urgency must not (under any circumstances) be self-induced. This is how the courts as arbiters of justice, have been able to hold the scales balanced, and maintain their neutrality, integrity, credibility and independence, in the determination of particularly, the plethora of pre-trial motions that they normally rule on, on a daily basis.

Essentially, on the evidential significance to cross-examine deponents to affidavits, The Court of Appeal of British Columbia held in **Brown v. Garrison (1969) W.W. R. 248 at 205:**

> '... that the discretion of this court in allowing cross-examinations on affidavit, must be exercised on proper

principle and in the normal course will be ordered where the affidavit contains facts that are in issue.'

Significantly, the aforementioned affidavits which are in contention, indubitably contain a plethora of facts that are cognate with the facts in issue of this matter. Therefore, pursuant to this criterion alone, This Honourable Court will be tempted to dismiss the contentions and order that the deponents to the affidavits of the aforesaid dates, be accordingly cross-examined. However, any attempt to determine the contentions from the standpoint of their evidential significance alone, will be guilty of a naïve legal miscalculation.

Procedurally, Order 31 of the High court Rules, 2007, exclusively deals with affidavits. Thus, it appears that there is nothing in Order 31 that can be of help to this tribunal of facts in resolving the issues in which the contentions are clothed. Nevertheless, the decided case referenced above {Brown v. Garrison (op. cit)}, further alludes to another procedural issue that is crucial in the determination of whether a court of competent jurisdiction will grant or refuse to grant an application that calls for deponents to be cross-examined, on the contents of their affidavits. Thus, it was also held:

'... in keeping with the exercise of discretion, there is also the general rule that a party must file its affidavit, before he/she can cross-examine a deponent on the opposing side.'

This principle was also religiously followed in **Peterson v. Hodges (1914) B. C. R. 598 at 602, 601 (B. C.C.A)**. The Supreme Court of British Columbia inter alia held in **Royal Bank of Canada v. Larry Micheal Jones, 2000 BCSC 520 (CanLII)**, that:

'The Plaintiff... swore to her affidavit in support of the 1995 Summary Trial application, which was filed and delivered to the Defendant on December, 8, 1995. Thus, the Defendant had been in possession of that affidavit for approximately four years; he could have consulted with different law firms that would have addressed on whether or not to cross-examine, or another representative, failing her availability'.

Meanwhile, in effect, the Supreme Court of British Columbia, upheld the Court of Appeals decision in the foregoing cases; and emphasized the significance of the principle that even the application to cross-examine, has to be made within a reasonable period, for it to be entertained by any court of competent jurisdiction. Nonetheless, the position of the Supreme Court of British Columbia, on the need to file an opposing affidavit to a subsisting affidavit in support, before service of the notice

of intention to cross examine, is in accordance with the provisions of Sierra Leone's repealed High Court Rules of 1960. Moreover, the Rules of Court Committee, advertently or inadvertently, expurgated the foregoing provision, which was neatly embedded in the 1960 rules, in developing and shaping the procedures, culminating in the High Court Rules, 2007.

Thus, there is now a lacunar in this area of Sierra Leone's adjectival law. Indeed, there is no provision in the High Court Rules of 2007, regulating the very issue upon which the contentions, which are to be determined are predicated. So, in the circumstances, it appears that the issues, which are to be determined, regarding the need to cross-examine the deponents to the aforementioned affidavits, are subject to the unfettered discretion of this Bench. Nonetheless, this Bench is minded and inclined, to give credence to the position, articulated in the decided cases, referenced above.

Therefore, since the Defendant's Counsel (E.T. Koroma Esq.) has not filed any affidavit in opposition to the two affidavits, which he says contain statements that are as preposterous as they are pretentious, I will order that the said counsel ought to have filed two affidavits in opposition to the affidavits in support of the motion, dated 11th May, 2019, before filing the notice of intention to cross examine, dated 22nd May, 2019.

Thus, I will caution, in the interest of fairness and justice, that the application to cross-examine the aforementioned deponents, is permitted by This Honourable Court, subject to the filing of the requisite affidavits in opposition. Regarding G.K. Thorley's notice of intention to cross examine, I will caution that he seeks leave of This Honourable Court, to file another notice of intention to cross-examine, because the date of the affidavit which he referenced, is different from that which is in attached to E.T. Koroma's notice of motion, dated 2nd May, 2019.

1.2 The Ramification of Non-Compliance with Section 3 (1) of Act N0.14 of 2000.

The argument of E.T. Koroma Esq. on this point is simple and straightforward. The writ of summons contain the names of both the Administrator and Registrar General and the Director of Surveys and Lands. Since both officials are in two distinctively different state institutions, the Attorney General and Minister of Justice, ought to have been accordingly served with the requisite processes, about this action three months before its commencement, pursuant to section 3 (1) of Act N0.14 of 2000. Counsel alluded to this court's ruling in **Media One Centre v. Electricity Distribution and Supply Authority (EDSA) (C.C 33/2018) Ruling Delivered on 22nd November, 2018)**, in justification of his submission and posited that this action should be dismissed with cost.

However, I do not agree with this submission. Section 3(1) of Act N0. 14 of 2000, does not apply. The inclusion of the names of the aforementioned officers in the writ of summons and statements of claim, does not presuppose that the Attorney-General and Minister of Justice has to be served with the apposite three (3) months' notice; espoused in section 3 (1) of the said statute. Section 3 (1) is applicable to every situation in which an action is directly brought against a state institution; as in the **Media One case (op. cit)**, which Counsel referenced.

This case is brought against the 1st Defendant; and the orders prayed for are exclusively directed against the 1st Defendant. The inclusion of the names of the aforementioned officers in the writ of summons, does not presuppose that whatever orders that this court pronounces will affect them. What about actions that are brought for the registration of registrable instruments out of time, pursuant to section 2 of Act N0. 6 of 1964? Why it is that such actions are always brought against the Registrar General (as a Defendant), but notices are not always sent to the Attorney-General and Minister of Justice in compliance with the said subsection (1) of section3?

Furthermore, the application to dismiss the action was orally made. One would have thought that such a serious application, should have been made by a notice of motion, bolstered by the requisite affidavit. Again,

the best thing counsel should have done, was to have filed a motion requesting this Bench to stay the proceedings for the reason stated above; and not to ask for it to be dismissed. Even if he had filed a motion for a stay of proceedings, the order would not have been granted for the same articulated reason aforementioned. Against this backdrop, I will thus dismiss the application. And I make no order as to cost.

12/2/2021

The Hon. Dr. Justice Abou Binneh-Kamara,

Justice of the Superior Court of Judicature of

Sierra Leone.

C.C. 12/20 2020 D. N0.2

In the High Court of Sierra Leone

(Land, Property and Environmental Division)

Between:-

Haja Fanta Daramy

Suing by Her Attorney Mariama Kondeh) - Plaintiff

And

Emmanuel Sanko Sawyer and Others - Defendants

Counsels:

Abubakarr Dexter Bangura Esq. and C. Campbell Esq. for the Plaintiff/Applicant.

Emmanuel Teddy Koroma for the 1st and 2nd Defendants/Respondents.

E.F Beoku-Betts Esq. for the 3rd Defendant/Respondent.

P. Fofanah for the 4th and 5th Defendants/Respondents.

G. Conteh for the 7th Defendant/Respondent.

Ruling on an Objection to Cross Examine Deponents on the Authenticity of the Contents of their Affidavits in Opposition, Delivered by The Hon. Dr. Justice A. Binneh-Kamara, on Monday, 7th December, 2020.

1.0 Introduction.

This ruling is consequent on a number of relevant facts and facts in issue that should be first put into context to set the records straight; and to further articulate the circumstances that culminated in the filing of the notice of intention, by Counsel for the Plaintiff/Applicant, Abubakarr Dexter Bangura Esq.(hereinafter referred to as Counsel for The Applicant), to cross-examine Counsel for the 1st and 2nd Defendants/Respondents, Emmanuel Teddy Koroma Esq.(hereinafter referred to as Counsel for The 1st and 2nd Respondents), Patrick Fofanah and Kabbineh Ibrahim Kamara, on the authenticity of the contents of their affidavits in opposition, dated 31st March, 2020, 25th March, 2020, and 28th March, 2020.

Further, Counsel for The Applicant, had filed an ex parte notice of motion, dated 23rd February, 2020, for three specific orders: interim injunction, interlocutory injunction and cost. That application was bolstered by the affidavit of The Applicant's Attorney (Mariama Kondeh) of N0.12 Lumley Road, Spur Road, Freetown. Meanwhile, on 3rd March, 2020, this Honourable Court in its wisdom, granted one of the reliefs (the interim injunction) prayed for in that ex-parte application of 23rd February, 2020; and ordered that Counsel for The Applicant, should serve the requisite processes on the other counsels, representing The Respondents, for whom appearances had been entered, but neither the interlocutory injunction, nor the cost was granted.

The decision (at that stage) was precipitated by the fact that granting an interlocutory injunction, without giving an opportunity to the other side to be heard, would have amounted to a clear manifestation of injustice; and a contravention of the constitutional principle of of 'audi alteram partem' {see Subsections 1 and 2 of Section 23 of The Constitution of Sierra Leone, Act N0.6 of 1991). Again, the cost as requested was not granted, because the application's merit had not been determined at that stage of the proceedings.

1.1 <u>The Notice of Intention to Cross-Examine.</u>

As directed, Counsel for The Applicant, did serve the requisite processes on the other solicitors; and they subsequently filed their affidavits in opposition for the interlocutory injunction to be argued and determined by This Honourable Court. It is against this backdrop that, Counsel for The Applicant, became disenchanted with some of the facts deposed to in particularly the aforementioned affidavits of the said persons. He therefore filed in three (3) notices of intention to cross-examine The Counsel for the 1st and 2nd Respondents (Emmanuel Teddy Koroma), Patrick Fofanah and Kabbineh Ibrahim Kamara, on the authenticity of the contents of their affidavits in opposition, dated 31st March, 2020, 25th March, 2020 and 28th March, 2020, respectively.

1.2 <u>The Objection.</u>

When this matter came up for hearing on the 17th November, 2020, Counsel for the 1st and 2nd Respondent, who is one of the affiants, to be cross-examined, raised the following arguments in justification of why he thinks this Honourable Court should not grant the application:

1. The notices to cross-examine lack legal basis; as there is no law, giving Counsel for The Applicant the privilege to cross-examine deponents on the contents of their affidavits. He requests the

Bench to peruse the provisions of Constitutional Instrument N0. 25 of 2007, The High Court Rules, 2007 (hereinafter referred to as The HCR, 2007) to authenticate his submission.

2. That Sub rule (3) of Rule 3 of Order 32 of The HCR, 2007, does not have anything to do with notices of intention to cross examine; thus, the provision is inapplicable to the issue, which this Honourable Court must determine.
3. Every affidavit must contain facts that the deponent can prove. Should the other side be dissatisfied with the facts that are deposed to in an affidavit, it is for him to file in an affidavit in reply, debunking such facts.
4. That in accordance with the repealed High Court Rules of 1960, an affidavit in reply, must have been filed, responding to the specific facts in an affidavit, prior to the filing of any notice of intention to cross-examine, any affiant on any fact deponed to in an affidavit.
5. Counsel concluded that the notices of intention to cross-examine, are nothing but a ploy to delay the proceedings.

1.3 <u>Adopting the Objection.</u>

Meanwhile, save for E. F. Beoku-Betts Esq.(Counsel for The 3rd Respondent), whose client's affidavit in opposition, does not appear to have contained any facts or facts in issue, that should necessitate a cross-examination, G. Conteh Esq., and P. Fofanah Esq., whose client's affidavits in opposition, contained facts and facts in issues that, according to Counsel for The Applicant, have necessitated rigorous cross examinations, chose to adopt the objection of Counsel for the 1st and 2nd Respondent (as canvassed above), but made the following addenda:

1. The issues raised and facts deposed to can be decisively addressed should counsel for The Applicant, file in an affidavit in reply to the affidavit in opposition.
2. The trite law on the issue to be determined is followed by a procedure similar to the rule of pleadings. The affidavit in support of the application of 23rd February, 2020, is technically their statement of claim; and the affidavits in opposition are the defenses to the statement of claim, which is their affidavit in support. What should follow is a reply to the affidavits in opposition, which is yet to be filed; hence the application, should be discountenanced.

1.4 <u>The Oppositions to the Objection.</u>

Nonetheless, Counsel for the Applicant, contends that the grounds on which the objection is predicated are baseless; and the objection should be rejected in its entirety, because of the following reasons:

1. It is trite law that a deponent making a spurious allegation against an affidavit of another deponent ought to be cross-examined at the behest of The Applicant's solicitor, should the need arise.
2. The affidavit in opposition, deponed to by Counsel for the 1st and 2nd Respondents, contains a host of unsubstantiated allegations against The Plaintiff, to which appallingly, however, no evidence was adduced. Thus, to be able to verify the authenticity of contested facts, deposed to in an affidavit, the other side in the interest of justice, should be given the opportunity, to cross-examine the deponent.
3. It is interesting to note that Counsel for the 1st and 2nd Respondents, has also filed in a notice of intention to cross-examine the deponent of the affidavit in support of the application of 23rd February, 2020.

4. The principle of 'audi alteram partem', compels the court to hold the scales balanced in circumstances, wherein a litigant deems it necessary, for the court to be able to analyse the facts, deposed to herein. Counsel relies on Sub rule (3) of Rule 3 of Order 32 of The HCR, 2007.

1.5 The Objection in the Context of Sierra Leone's Adjectival Law.

This Honourable Court is quite clear about the fact that the contention that it must resolve is firmly rooted in the province of Sierra Leone's adjectival law. Adjectival law, which does not create rights and obligations, constitutes what are generally known as rules of evidence and procedure; which are the principal mechanisms, pursuant to which rights and obligations are enforced. Emphatically, it is the substantive law that establishes the rights and obligations that are enforced, pursuant to adjectival law. However, the fact in issue that is to be resolved is both evidential and procedural. Thus, it is evidential because it generically relates to affidavits. And issues of evidential value and the relevance of affidavits (in support, in opposition, in reply etc.) in particularly civil litigation, cannot be overemphasised.

Again, the issue is procedural, because there is a contention about the procedural legality or relevance, to allow deponents, who have factually deposed to certain affidavits in opposition, to be cross-examined on the authenticity of the very contents, deponed to in their respective affidavits. Thus, I am obliged to determine both the evidential and procedural legality and relevance of the facts in issue, underpinning the objection. I will start with the objection's evidential significance. Essentially, the complexities of issues relating to relevance, admissibility and weight in the law of evidence, have been demystified and laid bare by even legal academics in the commonwealth jurisdiction. Thus, every

fact which is relevant to any other fact in issue is relevant and therefore admissible.

However, notwithstanding its admissibility, the weight which a reasonable and a credible tribunal of facts attaches to it, is what is much more important. Meanwhile, the nature of civil litigations, requires much evidence to be adduced via affidavits. The complexities of civil litigations, inter alia demand the filing of a plethora of pre-trial motions by both sides of the litigations; supported by the requisite affidavits. And the courts will never be able to judiciously and expeditiously determine such pre-trial motions, if they are not equipped with the apposite pieces of evidence; deponed to in such affidavits. Thus, because such applications are made before the commencement of the trials, it would be legally and even rationally inexpedient to call witnesses to come testify on oaths. So, the facts that they deposed to in their requisite affidavits are of very serious evidential value.

In tandem with the constitutional principle of 'audi alteram partem' (hear the other side), the courts will never grant the reliefs prayed for without allowing the other side to present their case. This is the essence of the filing of affidavits in oppositions; in circumstances, wherein the applications are made inter parte. However, this is not the case in circumstances, wherein the courts are to deal with ex parte applications. Alas! Even when it comes to ex parte applications, the applicants are obliged to make full and frank disclosures of the undiluted facts that inevitably necessitate the applications to the courts, in order for them to be able to make fair, just and reasonable judgments on such applications; and the applications' urgency, must not under any circumstances, be self-induced. This is how the courts, as arbiters of justice, have been able to hold the scales balanced; and maintain their neutrality, integrity, credibility and independence, in the determination of particularly the plethora of pre-trial motions that they must rule on on a plethora of

complex civil litigations that usually come before them for hearing and determination on a daily basis.

Significantly, on the evidential significance to cross-examine deponents of affidavits, The Court of Appeal of British Columbia held in **Brown v Garrison** (1969) 63 W.W.R. 248 at 205, ... 'that the discretion of this court in allowing cross-examination on affidavits must be exercised on proper principles and in the normal course will be ordered where the affidavit contains fact that are in issue'. Thus, the affidavits of 25th, 28th and 31st March, 2020, which are the subject of the objection, undoubtedly contain a plethora of facts that are relevant to the facts in issue of this matter. Therefore, on the basis of this criterion alone, This Honourable Court will be tempted to dismiss the objection and order that the deponents in the affidavits of the aforementioned dates, be accordingly cross-examined.

Meanwhile, this issue is clearly articulated in the first two points, raised by Counsel for The Applicant, in justification of his submission that the objection must not be sustained. But any attempt to determine the objection from the standpoint of its evidential significance alone, will be guilty of a naïve legal miscalculation. Procedurally, some of the issues explicated in the foregoing analysis, are accordingly articulated in Order 31 of The HCR, 2007, which exclusively deals with affidavits. Nevertheless, my reading of Order 31, depicts that there is nothing in its purports and contents that can be of help in resolving the issue in which the objection is clothed. Furthermore, the reference by Counsel for The Applicant to Sub rule (3) of Rule 3 of Order 32 of The HCR, 2007, does not bolster his justification of why he thinks the application, should not be countenanced.

Moreover, Order 32 concerns evidence by deposition, including the power to order depositions to be taken; the circumstances where the

persons that are to be examined are out of the jurisdiction; the order for issue of letter of request; enforcing attendance of witnesses at examination; refusal of witnesses to attend etc. Significantly, since Order 32 does not have anything to do with notices of intention to cross examine; I will thus conclude on this point that the provision, which Counsel for The Applicant, thus alluded to in Order 32 is inapplicable to the issue, which This Honourable Court must determine. Essentially, the decided case, referenced above {**Brown v Garrison (1969)** 63 W.W.R. 248 at 205}, further alludes to another vital procedural issue that is crucial in the determination of whether a court of competent jurisdiction will grant or refuse to grant an application that calls for deponents to be cross-examined, on the contents of their affidavits.

Thus it was also held: '... in keeping with the exercise of discretion, that there is also the general rule that a party must file its affidavit, before he or she can cross-examine a deponent on the opposing side'. This principle was also accordingly enunciated in **Paterson v Hodges (1914)**, 20 B.C.R 598 at 602, 601 (B.CC.A). Furthermore, the Supreme Court of British Columbia inter alia held in **Royal Bank of Canada v Larry Micheal Jones, 2000** BCSC 520 (CanLII), that 'The Plaintiff (Ms. Buffam) swore to her affidavit in support of the 1995 summary trial application, which was filed and delivered to The Defendant on December 8, 1995. Thus, The Defendant had been in possession of that affidavit for approximately four years; he could have consulted with different law firms that would have advised on whether or not to cross-examine The Plaintiff or another representative, failing her availability'.

In effect, the Supreme Court of British Columbia, upheld the Court of Appeal's decisions in the foregoing cases; and emphasized the significance of the principle that even the application to cross-examine, has to be made within a reasonable period of time, for it to be entertained by a court of competent jurisdiction. The position of British

Columbia on the need to file an affidavit in reply to an affidavit in opposition, before service of the notice of intention to cross-examine is in accordance with the provision of the repealed High Court Rules of 1960, which makes it quite clear that an affidavit in reply, must have been filed, responding to the specific facts in an affidavit in opposition, prior to the filing of any notice of intention to cross-examine, an affiant on facts deponed to in an affidavit.

However, the Rules of Court Committee, advertently or inadvertently, expurgated the foregoing provision, which was neatly embedded in the 1960 rules, in developing and shaping the procedures, culminating in The HCR 2007. Thus, there is now a lacunar in this area of Sierra Leone's adjectival law. Indeed, there is now no provision in The HCR, 2007, regulating the very issue upon which the objection, which is to be determined is predicated. So in the circumstance, it appears, that the issue that is to be determined, is subject to the unfettered discretion of The Bench. But this Bench is minded and inclined, to give credence to the position, articulated in the aforementioned decided cases of the Court of Appeal and Supreme Court of British Columbia; which has become a trite law in our jurisdiction, by virtue of the 1960 rules.

This trite law (according to Counsel for the 4th and 5th Respondents) is akin to a procedure similar to the rule of pleadings. The affidavit in support of the application of 23rd February, 2020, is technically their statement of claim; and the affidavits in opposition are the defenses to their statement of claim (which is their affidavit in support). What should follow is a reply to the affidavits in opposition, which is yet to be filed. I will indorse this analogy, as it clearly dovetails with the position, which This Honourable Court has taken in the determination of this objection. Circumspectly, it cannot be denied that the notice of intention to cross-examine was filed, within a reasonable period of time {see **Royal Bank of Canada v Larry Micheal Jones,** 2000 BCSC 520 (CanLII)}. What is clearly

not complied with, by Counsel for The Applicant, is that he did not file the requisite affidavits in reply to the affidavits in opposition, containing the scurrilous and spurious allegations, which he wants to debunk. Against this backdrop, and on the basis of the aforementioned authorities, it would be procedurally unwise to get Counsel for The Applicant to conduct the three distinctively different cross-examinations at this stage, without filing his affidavits in reply to the affidavits in opposition he is challenging. Therefore, I will order Counsel for The Applicant to go do the needful; as articulated in the foregoing paragraph. And will make no order as to cost. I so order.

7/12/2022

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

Justice of the Superior Court of Judicature

of Sierra Leone.