CC: 215/19 2019 K. NO.31

In the High Court of Sierra Leone

(Land and Property Division)

Between:

Bassam Koussa - **Plaintiff/Complainant.**

No. 79 Wilkinson Road

Freetown.

And

Alie Basma - **Defendant/Contemnor.**

Wilkinson Road

Freetown.

Counsel:

Vandy S. Nabie Esq. for the Plaintiff/Complainant.

Sahid M. Sesay Esq. and J.O.P Manley-Spain Esq. for the Defendant/Contemnor.

Ruling on a Preliminary Objection to the Form of the Application for a Contempt Order, requested to be made Pursuant to Rule 1 of Order 51 of The High Court Rules, 2007 (hereinafter referred to as The HCR, 2007), delivered by The Hon. Justice Dr. Abou B. M. Binneh-Kamara, on Tuesday, 27th July, 2021.

1.1The Objection's Background and Context.

The Plaintiff's/ Complainant's counsel (V. S. Nabie Esq.), filed a notice of motion, dated 22nd June, 2021, in respect of an order to commit the Defendant/Contemnor and his Agents/Servants and/or Privies to the Correctional Centre Pademba Road

Freetown for disobeying the injunctive order of His Lordship the Hon. Dr. Justice Abou B. M. Binneh-Kamara dated the 21st of June, 2021; on the basis of the fact that in spite of the foregoing restraining order imposed on the aforesaid persons, they have continued to carry out the construction of a wall fence and have disposed of and/or rented the suited property to third parties. This application is accordingly strengthened with facts deposed to on an affidavit, sworn to by one Vandy Samuel Nabie Esq. (the Plaintiff's/Complainant's counsel). Meanwhile, on Friday, 25th June, 2021, the said Counsel began moving the foregoing application.

Nonetheless, J.O.P Manley Spain Esq., who chose not to file an affidavit in opposition at that stage, immediately raised a preliminary objection to the application on the following ground:

> The application that is being moved was never served on the Defendant/Contemnor herein. The HCR, 2007 makes it mandatory that in contempt proceedings the Defendant/Contemnor shall be served with the requisite processes. Sub rule (2) of Rule 2 of Order 51 of The HCR, 2007, is clearly instructive on this. No attempt to serve my client was made. The exception to the rule's applicability can only be invoked in the circumstance wherein service has actually been effected, but the Defendant/Contemnor could not be reached. For personal service in this matter, cannot occasion any injustice to the other side. The matter before this Honourable Court is for a declaration of title to property, which will never amount to any injustice, should personal service be effected.

However, this compellable submission could not be neatly and convincingly controverted in V.S. Nabie's eloquently colorful and marathon response; which did not dovetail with the appositeness of the foregoing provision (in The HCR, 2007); as succinctly referenced by J.O.P Manley-Spain Esq. Thus, on the 28th June, 2021, this Honourable Court ruled as follows:

> The objection is predicated on a violation of Order 51 Rule 2 (2) of The HCR, 2007. This rule concerns the issue of personal service of the apposite processes of contempt proceedings on an alleged contemnor. The evidence regarding the content of this application, is not indicative of any fact that V.S. Nabie Esq., really effected personal service of the requisite processes on the alleged contemnor in connection with the application that is yet to be

determined. The circumvention of the aforementioned provision in The HCR, 2007, can aptly be described as an abuse of process; and this Honourable Court cannot, under any circumstance, condescend to any attempt that is tantamount to circumventing any provision of The HCR, 2007. I will thus uphold the objection and simultaneously order that V.S Nabie Esq. must immediately get a process server to go serve the requisite processes on the alleged contemnor and evidence of such service must be exhibited in Counsel's way book. And the fact of such service must be deposed to in an affidavit, which must exhibit evidence of such service. I so order.

Indeed, the Court's records are clearly indicative of the fact that V.S. Nabie Esq. decisively acceded to the ruling and thus complied with the foregoing order, before the matter subsequently came up for hearing on the 29th June, 2021. Apparently, on the said date, counsel rose again to proceed with the same application, but immediately he started, S.M. Sesay Esq. (who appeared as counsel for the Defendant/Contemnor, alongside J.O.P Manley-Spain Esq.), raised another controversial objection, on the content of the form of the application. He noted that the notice of motion dated 22nd June, 2021, was not taken out in the action that was before the court. He furthered that the said motion being an interlocutory application in a pending matter before the High Court of Justice, was commenced by a writ of summons. The title in the said motion has the semblance of a matter initiated other than by a writ of summons. The matter that is before this Honourable Court does not call for the construction of any legislation or provisions thereof.

For that reason, the writ of summons does not have any references to an enactment whether it is English or local. The title of the application cannot be procedurally commenced with 'a cc number'; it could have been apt for it to have been given 'a miscellaneous application number'. So, counsel requested the Bench to dismiss the application with substantial cost; whilst relying on the provision of Order 57 of The HCR, 2007. Alternatively, Counsel urged the Bench to strike out or dismiss the application, on the understanding that it does not meet the provision of Order 5 Rule 3 (1) of The HCR, 2007. This provision thus deprives this Honourable Court of the jurisdiction to adjudicate on same; as there is no matter pending before the Court, bearing the title that is on the face of the motion of 22nd June, 2021.

In his response, V.S. Nabie Esq., stated that the application was properly made in accordance Order 51 Rule 2 (1) of The HCR, 2007 and that S.M. Sesay's allusion to Order 5 Rule 3 (1) of same is opaque and simultaneously insignificant to the application; as it only relates to proceedings begun by originating summons. He furthered that the title of the action remained the original title when the writ was issued and it is because of the nature of the proceedings that is why the application is titled Plaintiff/Complainant and Defendant/Contemnor; noting that such an application has to be made within CC215/19, for it is an interlocutory application. Hence, it cannot be allocated under any miscellaneous application number, as Counsel would want us to believe.

Meanwhile, V.S. Nabie Esq. also stated that proceedings pursuant to Order 51 Rule 2 (1) of The HCR, 2007, are made by way of notice of motion; and such together with the supporting affidavit have to be personally served on the Defendant/Contemnor; noting that the preliminary objection is of no moment before this Honourable Court, and hence it should be dismissed with substantial cost. Moreover, on the contention that the application should have been made under Order 5 Rule 3 (1) of The HCR, 2007, counsel submitted that that contention is baseless, unfounded and misleading because the application was not commenced by originating summons. Finally, counsel cited the following authorities to bolster his submissions: Republic **v.** Accra Circuit Court Judge; Ex Parte Asamani and Another, Ghana Law Reports {2008-2009} 1 GLR, Regina **v.** Shekpendeh, Ex Parte Attorney-General {1957- 60} ALR S.L 213; Regina **v.** Shamel {1957- 60} ALR S. L.168, Johnson **v.** Reginam {1970-1971} ARLR S. L. 122 and Re Manni, A Contemnor ALR S. L 557.

1.2 <u>The Analysis.</u>

Let me start this analysis by indicating that the authorities Republic **v.** Accra Circuit Court Judge; Ex Parte Asamani and Another, Ghana Law Reports {2008-2009} 1 GLR, Regina **v.** Shekpendeh, Ex Parte Attorney-General {1957- 60} ALR S.L 213; Regina **v.** Shamel {1957- 60} ALR S. L.168, Johnson **v.** Reginam {1970-1971} ARLR S. L. 122 and Re Manni, A Contemnor ALR S. L. 557, sequentially deal with a plethora of legal issues, relative to committal for contempt of a court order, committal to prison for prejudicing a fair trial, contempt of court, an appeal against the conviction for contempt (on the face of the court) by a Judge of the High Court and release of the

contemnor. I must also state that even though the aforesaid authorities, are clearly cognate with the very fundamental and serious issues of contempt proceedings, they do not have any relevance to the preliminary objection, which legality I am obliged to determine at this stage. Therefore, it is absolutely needless to say that I will make no allusion to them as the analysis that informs this ruling unfolds.

Nonetheless, it is discernible in the argumentation of S.M. Sesay Esq. that the principal thrust of the preliminary objection, swirls around not the content, but the form of the notice of motion of 22nd June, 2021. The objection does not have anything to do with the service of the requisite processes for contempt on the Defendant/Contemnor, pursuant to Order 51 Rule 2 (2) of The HCR, 2007. This was the basis for the objection, which J.O.P Manley-Spain Esq. had raised, culminating in the decision of this Honourable Court of 28th June, 2021. However, a clearly noticeable contention, which is inferred from the foregoing submissions, purls around commencement of civil proceedings, which may be begun in the High Court of Justice by writ, originating summons, originating motion or petition[1] and how any other subsequent interlocutory application can be made, pursuant to an action that might have been commenced, relative to any of the foregoing modes of approaching the Court[2].

The original action (in whose womb the contempt application is born) was commenced by a writ of summons, dated 18th June, 2019. And it can accordingly be referenced in the Registry of the High Court of Justice, pursuant to the number CC. 215/19 2019 K N0.31. The particulars of claim in the said writ encompasses declaration of title to property, delivery of possession, damages for trespass, injunction and any other relief (s) that this Honourable Court might deem necessary. Essentially, every subsequent application that is made, pursuant to this action, can only be regularly and procedurally made, in tandem with the aforementioned reference number. The question that is to be posed at this stage is whether the application, which is vehemently objected to, is made pursuant to the above reference number. This question can only be reasonably answered (in the light of the papers filed) in the affirmative.

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[1] See Order 5 Rule 1 of The HCR, 2007, dealing with mode of beginning civil proceedings in the court.

[2] A point that is quite explicit in The High Court Rules, 2007 is that the rules clearly stipulate how every interlocutory application can be made.

There is absolutely nothing of evidential value, before this Honourable Court, suggesting the contrary. It logically follows from an examination of the papers filed that there is nothing procedurally wrong in making an application for contempt proceedings by a notice of motion, bolstered by the apposite affidavit, pursuant to Order 51 Rules 1 and 2 of The HCR of 2007. So, it is clear that the application is rightly made, in accordance with the appropriate law; and the facts deposed to in the affidavit, are calculated (framed) to convince this Honourable Court to grant the application.

However, notwithstanding the application's exactitude in substance, it cannot be said as V.S. Nabie Esq. has pontificated, that the preliminary objection is baseless, unfounded and misleading. This is simply because the objection relates to the actual form of the application (and not its substance). Indeed, the rightness of the substance of the application is what is accordingly articulated above. I will now proceed to deal with the form of the application. What do I mean by form in this context? I will bring to the fore or make salient (with the appropriate prominence and valence) the heading of the notice of motion dated 22nd June, 2021 to explicate this.

CC: 215/19 2019 K. NO.31

In the High Court of Sierra Leone

(Land and Property Division)

In the Matter of the Conveyancing Act (1881)

And

In the Matter of the Registration of Instruments Act (Cap 256) of the Laws of Sierra Leone, 1960

Between:

Bassam Koussa - **Plaintiff/Complainant.**

No. 79 Wilkinson Road

Freetown.

And

Alie Basma - **Defendant/Contemnor.**

Wilkinson Road

Freetown.

This is exactly how the heading of the said notice of motion is presented. From this presentation, two issues are discernible. First, it appears that even the mode pursuant to which this action originally commenced, touches and concerns the Conveyancing Act of 1881. Secondly, it seems that the action is also about the Registration of Instruments Act (Cap.256) of the Laws of Sierra Leone, 1960. The foregoing facts, leave a reasonable interpreter of The HCR, 2007, to conclude that the original action might have been commenced by an originating summons. In essence, this is the principal thrust of the objection of S.M. Sesay Esq. That is, the references to the said statutes in the notice of motion of 22nd June, 2021, presuppose that the original action was commenced by way of an originating summons, in respect of certain controversial issues, relative to the constructions of the very statutes that are singled out in the said notice of motion.

So, the underpinning legal inference (not a legal fact) that is to be drawn herein is that the action, should have been originally referenced with a miscellaneous; as opposed to a cc number. So, it logically follows, that any interlocutory motion that comes to the court for determination, pursuant to the original action that is instituted in relation to the constructions of specific statutes, should be made under a miscellaneous application reference number. However, this argument might be considered as a very shrewd exercise in logic, founded in our rules of procedure in particular. However, unpicking the argument further, one factually sees the nexus between the commencement of actions relative to statutory constructions and the need to approach the High Court of Justice for such issues by originating summonses.

To lend the apposite succour to this statement, I will rely on Order 5 Rule 3 (1) of The High Court Rules 2007 and I quote:

> Proceedings by which an application is to be made to the Court or a Judge under <u>any enactment shall be begun by originating summons </u>{my emphasis is underlined} except where by these rules or by or under an enactment the application is expressly required or authorized to be made by some other means.

Thus, it is discernible in the above provision that actions that are geared towards statutory remedies are begun by originating summonses (and not by writ of summonses). It is also clear in the face of the originating process of this action and particularly the statements and particulars of claim, that it was commenced by a writ of summons. And the particulars of claim are not unconnected with declaration of tilt to property, injunctive reliefs, delivery of possession, damages for trespass etc. These are remedies that can be sought and given by the High Court of Justice, even without any need to interpret the provisions in the Conveyancing Act, 1881, which is among other things, relevant to the structure and contents of conveyances; and the Registration of Instruments Act (Cap. 256) of the Laws of Sierra Leone, 1960; which is of very little or no significance for consideration by the courts, relative to a declaration of title to property. Meanwhile, the rest of this analysis is geared towards clarifying this statement and simultaneously determined whether the objection is sustainable in law.

According to the locus classicus of Sorie Tarawalie (Appellant) **v.** Sorie Koroma (As Administrator of the Estate of Sorie Mansaray) (Respondent) S.C Civ. APP. 7/2004 and Seymour Wilson **v.** Musa Abess S. C Civ. App. 5/79, The Hon. Dr. Justice Ade Renner - Thomas, C. J. and The Hon. Mr. Justice Livesey Luke, C. J. acknowledged and gave credence to the incontrovertible legal position, regarding the fact that in Sierra Leone, a Plaintiff or Claimant, can either rely on possessory or documentary title, in an action for a declaration of title to property. Thus, in an instance where the reliance is on possessory title, the claimant needs not adduce any documentary evidence, that he/she holds a better title to any other person in respect of any realty in the Western Area. Thus, at this stage, it is immaterial to articulate what and what a Plaintiff/Claimant, must prove to establish a case on declaration of ownership to fee simple absolute in possession, based on possessory title.

What I will however do herein, is to serialize the following cases as evidence of authorities of Sierra Leone's Superior Court of Judicature, pursuant to which

declarations of fee simple absolute in possession, have been made in respect of Plaintiffs/Claimants, who have relied on possessory as opposed to documentary titles: Cole **v.** Cummings (N0.2) (1964-66), ALR S. L. Series page 164, Mansaray **v.** Williams (1968-69) ALR S. L Series, page 326, John and Macauley **v.** Stafford and Others S.L. S. C Civ. App. 1/75. The rationale for those decisions were accordingly strengthened by Livesey Luke C. J. in Seymour Wilson **v.** Musa Abess[3]:

> I think it is necessary to point out that until 1964, registration of instruments was not compulsory in Sierra Leone. It was the Registration of Instrument (Amendment) Act, 1964 that made registration of instruments compulsory. So there are possibly hundreds of pre -1964 unregistered conveyances ... It would mean that any person taking a conveyance of a piece of land after 1964 from a person having no title to the land and duly registering the conveyance would automatically have title to the land as against the true owner holding an unregistered pre - 1964 conveyance. The legislature would not have intended such absurd consequences.

Moreover, one would also ask whether the mere registration of an instrument, pursuant to Cap. 256 (as Amended) ipso facto, confer title to the holder of a registered instrument? Does Cap.256 really concern registration of titles? Again, one would ask why should the face of a notice of motion, inter alia contain, the statement 'In the matter of the Conveyancing Act (1881)' and 'In the Matter of the Registration of Instruments Act (Cap. 256) of the Law of Sierra Leone, 1960'? Meanwhile, I will answer the first question in the negative; and simultaneously provide the requisite succour for this position, with a notable quotation from Livesey Luke, C. J. in the celebrated case of Seymour Wilson **v.** Musa Abess:

> Registration of an instrument under the Act (Cap. 256) does not confer title on the purchaser, lessee or mortgagee etc. nor does it render the title of a person indefeasible. What confers title (if at all) in such a situation is the instrument itself and not the registration thereof. So the fact that a conveyance is registered does not ipso facto mean that the purchaser thereby has a good title to the land conveyed. In fact the conveyance may convey no good title at all {my emphasis is underlined}.

[3] See page 79.

Thus, I will as well answer the second question in the negative. This is simply because the short title to Cap.256 (as Amended) reads: 'An ordinance to Amend and Consolidate the Law relating to the Registration of Instruments'. Therefore, it is clear for all intent and purposes, that the purports of the statute, whirls around 'registration of instruments' and not 'registration of title'; simultaneously, there is no provision in all its thirty-one (31) sections and three (3) schedules, that deals with registration of title. Livesey Luke C. J further espoused the fundamental distinction between 'registrations of instrument' and 'registration of title', by reference to the position in England and with a clearly articulated thought experiment, rationalised in his analysis, between pages 74 and 81. The segments of his analysis, which can be elliptically put into context are these:

> '... it should be abundantly clear that there is a fundamental and important difference between registration of instruments and registration of title. Cap. 256 does not provide for, nor does it pretend to contemplate, the registration of title. It states quite clearly in the long title that it was passed to provide for the registration of instruments.[4]
>
> The mere registration of an instrument does not confer title to the land effected on the purchaser etc. unless the vendor had title to pass or had authority to execute on behalf of the true owner, nor does it thereby render the title of the purchaser indefeasible[5]

To the third question, I will pontificate that the words 'In the Matter of the Conveyancing Act (1881)' and 'In the Matter of the Registration of Instruments Act (Cap. 256) of the Laws of Sierra Leone, 1960', are unnecessary and superfluous interpolations, contrived to thwart the real purport of the motion of 22nd June, 2021. The mere addition of such words on the face of that motion, really gives the impression that the original action, might have been commenced, pursuant to an originating summons; when in actuality it was commenced by a writ of summons. In fact, the words amount to very conspicuous irregularities that can hardly be cured. This Honourable Court will not allow V. S. Nabie Esq., to proceed with the application in this form. I will again instruct counsel to go do the needful and be prepared to come move the court on the contempt proceedings, when the motion

[4] See page 76.
[5] See page 78.

of 22nd June, 2021 is accordingly re-done. I will therefore strike out the application and make no order as to cost at this stage. I so order.

The Hon. Dr. Justice Abou B.M Binneh-Kamara,

Justice of the Superior Court of Judicature of the Republic

of Sierra Leone

Signature..

Date..........................27/7/2021..........