

Neutral Citation Number CC 159/2021 A17

Land and Property Division

Case No: CC159/2021

IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN
LAND, PROPERTY AND ENVIRONMENTAL DIVISION

Law Court Building
Siaka Stevens Street
Freetown

Date: 25 June 2021

Before:

THE HONOURABLE MR JUSTICE FISHER J

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Between:

Environmental Protection Agency

Plaintiff

-and-

Lumley Atlantic Hotel

Defendant

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.....

T Sangba for the Plaintiff

Mrs B Michael for the Defendant.

Hearing dates: 21st June 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. I gave an earlier ruling in this matter on the 10th June 2021, in which I gave a number of orders. By way of a notice of motion dated 21st day of June 2021, the Plaintiff sought leave to amend its writ of summons, pursuant to Order 23 rule 5 of the High Court Rules 2007. The application is supported by the affidavit of Fatmata Bintu Sesay, sworn to on the 16th day of June 2021, with its exhibits attached.
2. Before me this afternoon, B Michael of counsel for the defendants raised a preliminary objection to the notice of motion on the basis that the order of the court was to the effect that the writ of summons was struck out as disclosing no reasonable cause of action. In the circumstances, there is no live writ that can be amended by the plaintiff. Essentially, I had ruled that the plaintiff's claim as disclosed in the writ of summons, appear to be entirely reliant on the provisions of the Ramsar Convention, which do not disclose a cause of action and should be struck out.
3. T Sangba for the plaintiff was of the view that he misunderstood the ruling and had erroneously concluded that only an amendment to the initial writ of summons was needed. B Michael in reply argued that the writ had been struck out and consequently there was no writ worthy of being amended.

The Order of the 10th June 2021.

4. The orders I gave were very specific. Order 1 was clear on its face that the writ of summons was struck out, as it disclosed no reasonable cause of action. Order 2 was equally clear that leave was granted to the plaintiff to reinstitute further proceedings, within 7 days. There ought not to be any confusion as to what was required of the plaintiff. There is nothing in the orders that suggested the plaintiff was required to amend its writ of summons. If that was required, the order would have spelt it out in clear terms. Reinstitute simply means "to institute something again".
5. The wording of order 17 rule 1 para (a), clearly and instructively states what the discretion of the court is. The court has a discretion to either strike out or order an amendment to pleadings. Had I considered it expedient to order an amendment, I would have done so. The simple meaning of striking out simply means the said writ is no longer actionable. Notwithstanding, counsel was given the liberty to reinstate action if he is instructed to do so.

6. It is evident that he did comply with the order albeit wrongly by filing an application that is unarguable in law. It is the case that the notice of motion itself has been objected to by counsel. Miss Michael has argued that when a writ is ordered struck out it means just that. There cannot be an argument that the writ is still in existence. Had there been no proceedings filed, the court order to that extent with regard to costs would have been applied. As it is there was technical compliance but not full compliance.
7. In the circumstances, I shall make consequential orders.

IN THE CIRCUMSTANCES, HAVING HEARD T SANGBA OF COUNSEL FOR THE PLAINTIFF AND B MICHAEL OF COUNSEL FOR THE DEFENDANT AND HAVING READ THE SUPPORTING DOCUMENTS REFERRED TO ABOVE, I MAKE THE FOLLOWING ORDERS:

1. That action filed by the plaintiff is not sustainable in view of the fact that the pleadings had been struck out order of this court, and leave to amend was not granted to the plaintiff to amend a writ.
2. The plaintiff must file a new writ of summons within 7 days of this order, in any event no later than 4pm on Friday the 2nd June 2021, in compliance with the order of the 10th June 2021.
3. Costs summarily assessed at ten million Leones (Le10,000,000.00) shall be borne by the plaintiff and payable to the defendant, should the plaintiff fail to file a new writ of summons within 7 days of this Order, following which, directions would be issued for the future conduct of the matter.

The Hon Justice A Fisher J

