



IN THE HIGH COURT OF SIERRA LEONE

INDUSTRIAL COURT DIVISION

IC5/15

THE SECRETARY-GENERAL SIERRA LEONE DOCK PLAINTIFF
WORKERS UNION

AND

THE CHIEF ADMINISTRATOR FREETOWN CITY COUNCIL DEFENDANT

REPRESENTATION:

F. B. GERBER ESQ.

FOR THE PLAINTIFF

D. BEOKU-BETTS ESQ.

FOR THE DEFENDANT

BEFORE THE HON. MR. JUSTICE SENGU M. KOROMA JA.
PRESIDENT OF THE INDUSTRIAL COURT
RULING DELIVERED ON THE 19TH JULY, 2018

1. This matter was referred to the Industrial Court by the Commissioner of Labour pursuant to Rule 5 of the High Court (Industrial Court Division) (Procedure) Rules, 2000 by letter dated 16th January, 2015.
2. The matter first came up for hearing before Hamilton JSC (President) on the 11th March, 2015 with A.O Timbo Esq. and R. Gidwan Esq. for the Plaintiffs. There was no representation for the Defendant. The hearing proper commenced on the 29th April, 2018 when PW 1 Ansu Rashid Kalokoh testified.

Before cross-examining the witness, D. Beoku-Betts Esq., Counsel for the Defendant made an application to the Court on the 20th May, 2015 on the ground that the Plaintiffs were employees of the Freetown Waste Management Company of which the Freetown City Council is mere a shareholder.

3. He based his application on two issues to wit:
 - a) The Plaintiffs should be suing the Freetown Waste Management Company and not the Freetown City Council; and
 - b) that the Plaintiffs by-passed their employers and sued the shareholders as such has pierced the corporate veil.
4. Mr. Beoku-Betts then applied that members of the company including the Ministry of Local Government be joined as parties in accordance with Section 41 of the Regulation of Wages and Industrial Relations Act, 1971.
5. In response, A.O Timbo Esq. for the Plaintiffs argued that there was no employer-employee relationship between the Plaintiffs and the Ministry of Local Government. He submitted that the Freetown Waste Management Company was part of the FTCC and the Defendant took full responsibility to carry out the burden of the FWMC.
6. The Industrial Court by Ruling dated 9th day of November, 2015 granted the application and ordered that the Ministry of Local Government be joined as a party in accordance with Section 41 (1) of the Regulation of wages and Industrial Relations Act, 1971.

7. I have dilated on this application for the reason that the Defendant is suggesting that because of the separate legal personality of the FWMC, the Defendant cannot be held liable to the Plaintiffs. This suggestion permeates right through these proceedings.
8. The question here is whether the Defendant is right in applying for a joinder of the other shareholder or to plead that the FWMC is a separate legal body from the FCC. I believe the Defendant should have relied on the latter. By applying for the Ministry of Local Government to be added as a party, the FTCC are implying that there is liability but it is not theirs. It has not been established at this stage whether the FWMC has gone into liquidation, administration or receivership and so the failure of the Defendant to plead the corporate shield.
9. The Ruling referred to was delivered on the 9th November, 2015. The matter did not proceed until after twenty (20) adjournments until 8th November, 2017.
10. I shall comment on this Ruling and its impact on company Law jurisprudence in Sierra Leone when delivering my final judgment in this matter.
11. The present application is dated the 8th day of November, 2017 filed on behalf of the 1st Defendant, Freetown City Council (FCC). The application is made pursuant to Order 17 (3) of the High Court Rules, 2007 and is supported by the affidavit of Derrick Beoku-Betts sworn to on the 27th March, 2017.
12. In the said affidavit, Mr. Beoku-Betts exhibits the Certificate of Incorporation of the Freetown Waste Management Company (FWMC) Exhibit DBB2; the Memorandum and Articles of Association of FWMC; Letter from the Freetown City Council (FCC) confirming purchase of shares in the FWMC. He submits, firstly that the main issue here is whether the shareholders of FWMC are liable for the debt of that Company.

13. Secondly, if the claimants have brought the wrong Defendants to Court, they will see that the action be struck out.
14. These to my mind, are valid corporate relationship issues that constitute the root of company law in Sierra Leone.
15. On the next adjourned date on the 21st November, 2017, Francis Gerber Esq., Counsel for the Plaintiff/Respondent informs the Court that he has a preliminary objection as to the content of the Notice of Motion dated 27th March, 2017 which his colleague moved on the last adjourned date.
16. The objection of Mr. Gerber is based on the following grounds:-
 - a) That the application of the Applicant seeking judgment under Order 17 (3) of the High Court Rules, 2007 is seeking an answer on the question of fact and not of law as required by the Rule. This defect makes that part of the application an abuse of process; and
 - b) That since the Respondent has not consented to the application by virtue of Order 17 Rule 1 sub-rule 3, paragraphs (a) and (b), particularly (b), the Court should dismiss the application.
17. Mr. Gerber further submits that the Applicant cannot pray for an exclusive order under Order 17 for this Court to dismiss such an application without coming with a separate action by way of a fresh notice of Motion and supporting affidavit.
18. Mr. Francis Gerber submits that the Applicant cannot rely on both Order 17 and Order 21 (17) of the High Court Rules, 2007. Order 21 Rule 17, according to him states the manner in which such an application should be made. He submits that by invoking Order 21 (17) of the High Court Rules, 2007 which of itself is an exclusive order under the High Court Rules, 2007 under an application under Rule 17 is a clear abuse of process.

19. Mr. Beoku-Betts in reply argued that Order 17 deals with a determination of a matter or issue on a point of law. When that question is passed and answered in the affirmative, it will be dispositive.
20. On the contention regarding Order 21 Rule 17, Mr. Beoku-Betts submitted that there was no reason why a party cannot plead alternative remedies.
21. I have read the motion paper filed and the various affidavits thereto, I am of the view that this application touches and concerns the question whether FCC should be held liable for the liabilities of FWMC. This is a question posed by the Applicant. It in no way contests the entitlement of the Plaintiff. The question here is that who should bear responsibility for the payment of benefits to the Plaintiffs.

It is my conclusion that the best way of answering this question is to note the preliminary objection and order that the Applicant responds to the application. The final judgment in this matter shall address Mr. Gerber's preliminary objection.


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Hon. Mr. Justice Sengu M. Koroma JA