

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: 31 March 2021

**Before:**

**THE HONOURABLE MR JUSTICE FISHER J**

.....

**Between:**

**Mohamed Bangura**

**Plaintiff**

**-and-**

**Dalian Shenghai Ocean Fishing Co**

**Defendants**

.....

.....

**ET Eloh for the Plaintiff**

**Hearing dates: 22<sup>nd</sup>, 30<sup>th</sup> March 2021**

.....

**APPROVED ORDER**

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

.....

**THE HONOURABLE MR JUSTICE FISHER J**

**The Honourable Mr Justice Fisher J:**

1. By way of a notice of motion dated 1<sup>st</sup> March 2021, the plaintiff seeks leave to amend the writ of summons dated 21<sup>st</sup> 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.
2. In support of the application is the affidavit of Elvis T Enoh, sworn to on the 18<sup>th</sup> day of March 2021. Before me, Mr Enoh appeared for the plaintiff and applied for the said amendment. During the course of his application I enquired from him whether his application was being made interpartes or ex parte. He replied it was interpartes. I pointed out to him that I had not seen an affidavit of service evidencing service of the notice of motion on the other parties. He then applied for the matter to be treated as an ex parte notice of motion and prayed for the orders on the face of the motion. He relied upon the affidavit and relied upon order 23 rule 5(2) and 5 of the High Court Rules 2007.
3. I have had regard to the exhibits attached to the sworn affidavit and I have also had regard to the affidavit itself. In summary the deposed affidavit makes the following points:
  1. That he is a legal practitioner.
  2. That his firm was appointed as solicitor for the plaintiff on the 16<sup>th</sup> February 2021, and that prior to that day, the plaintiff had commenced an action by writ of summons dated 21<sup>st</sup> day of April 2017.
  3. That prior to the commencement of the said action, the plaintiff had commenced an action by a concurrent writ dated 24<sup>th</sup> day of July 2015, against the 1<sup>st</sup> defendant and two others at the High Court. The High Court delivered judgement in respect of the writ of summons dated July 2015, declaring the plaintiff as the sole agent and promoter of the 1<sup>st</sup> defendant. That judgement was appealed and

overturned by the Court of Appeal. A stay of execution was granted pending the hearing and determination of the appeal.

4. The plaintiff then appealed to the Supreme Court and the High Court judgement was restored. Several orders were made in favour of the plaintiff. The plaintiff is now seeking leave of the court to amend the claim against the 2<sup>nd</sup> and 3<sup>rd</sup> defendants in order to reflect his status as the sole agent and promoter of the 1<sup>st</sup> defendant.
4. I have had regard to the judgements and orders of the courts in this. I am particularly concerned by the order of The Supreme Court, in particular order 4 of the said order which remitted the matter to the High Court for the purpose of an inquiry into the profit derived from all fishing activities and what percentage is recoverable by the appellant (The plaintiff), which shall not exceed 35%.
5. I have also had regard to the 2<sup>nd</sup> Order of the Supreme Court, which required the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents (defendants) to render an account of the proceeds of sale of frozen and other fishes obtained during fishing activities in Sierra Leone of the 8 vessels namely Shengai 1-8 for the period June 2015 to October 2015. And following the rendering of account, the matter is then remitted to the High Court.
6. In the light of the orders of the Supreme Court to which I have referred above, I do not consider that this application ought to be made by way of an ex parte notice of motion, as there are issues that may require substantial submissions from the defendants. It seems to me that the plaintiff wishes to re-litigate issues afresh with the defendants, which, having regard to the orders of the Supreme Court, appears to be in breach of the orders of the Supreme Court or in any event, arguably an abuse of the court process. There needs to be additional information which will be obtained from the defendants, to guide the exercise of the courts discretion.
7. The plaintiff has relied upon Order 23 rule 5 of the High Court Rules 2007. In view of the fact that Order 23 rule 5 requires the court to exercise a discretion, I have to consider, on the evidence before me, whether, in the

light of the Orders of the Supreme Court, it is just to permit such an amendment, particularly without notice to the other parties.

8. I am therefore not satisfied at this stage, that this application should be considered in an *ex parte* application, particularly in the light of the orders of the Hon. Justice Miatta Samba J. (as she then was) I shall therefore make the following orders:

**UPON HEARING** ET Enoh Esq of counsel for the plaintiff;

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. That the plaintiff shall serve copies of this application on the defendant and/or their solicitors **within seven days** of this order.
2. Costs shall be in the cause.
3. The matter shall be listed for an interpartes hearing on **Monday 19<sup>th</sup> April 2021**.

The Hon Mr Justice A Fisher J