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In the High Court of Sierra Leone
(Land and Property Division)

Between:

Mrs. Lovetta Bomah - Plaintiffs

Mrs. Admire Mercier

Mr. Alice Turay

12A Prince Street

Freetown

And

People's Movement for Democratic Change - Defendant

Counsels:

Boniface S. Kamara Esq. for the Plaintiff.

Charles F. Margai Esq. for the Defendant.

Ruling on an Objection for this Action to be Struck Out, Pursuant to Some Jurisdictional Concerns, raised by Counsel for the Defendant, Delivered on Tuesday, 16th March, 2021, by The Hon. Dr. Justice Abou B.M. Binneh-Kamara.

1.0 Introduction.

This ruling is contingent on a jurisdictional objection, raised by Counsel for the Plaintiff (Charles F. Margai Esq.), on Tuesday, 18th June, 2019. The objection was taken after the action had been set down for trial. In fact, this Honourable Court had already given directions for the commencement of the trial; the exhibits that constitute the Court's bundle had been marked; and the first witness (Pw1) had already been led in evidence; when the objection was strongly taken.

1.1 The Timeliness of the Objection.

The immediate question that arose when the objection was taken, was how timely was it? Thus, it has been confirmed in a plethora of decided cases on particularly procedural issues; that a jurisdictional objection, can be taken at any stage during the course of a trial. Essentially, some of the most notable Nigerian authorities, which can be aptly cited, in justification of the aforementioned judicial position are, *Ogigie v. Obiyan* (1997) 10 NWLR (Pt. 524) 178, *Akinfolarin v. Akinola* (1974) 1 NWLR (Pt. 169) 523, *Petrojesica Ent. Ltd. v. Leventis Tech. Co. Ltd.* (1992) 5 NWLR

(1992) 5 NWLR (Pt. 242) 675 etc. So, on the basis of the foregoing persuasive authorities, the Defendant's Counsel was allowed to proceed with his objection, which is elliptically presented in the immediate succeeding paragraphs in 1.2 below. Meanwhile, Counsel relies on the Supreme Court's decision in the matter of the Sierra Leone People's Party (SLPP) (Plaintiff) and the People's Movement for Democratic Change (PMDC) (Plaintiff) v. The Attorney General and Minister of Justice and Seven Others (S C 5/2015) (Judgement Delivered on the 8th September, 2015).

1.2 The Objection and the Response thereto.

The principal thrust of the objection was for this action to be struck out, pursuant to a Supreme Court ruling, striking out the Originating Notice of Motion, dated the 24th April, 2015, which was issued in the names of the SLPP and PMDC; both being political parties, registered under the Political Parties Registration Act, 2002, lacked the jurisdiction to institute actions in their names; as same cannot be instituted against them. Meanwhile, Counsel concluded that on the basis of the foregoing Supreme Court ruling, this Honourable Court, which is lower in the judicial hierarchy, is bound by that decision, pursuant to Subsection (2) of Section 122 of the Constitution of Sierra Leone, Act N0.6 of 1991 (hereinafter referred to as Act No. 6 of 1991).

Contrariwise, on the 24th June, 2019, Counsel for the Defendant (Boniface S. kamara Esq.), responded to the objection, and inter alia, stated that the authority, which Charles F. Margai Esq. cited, regarding the jurisdiction of this Honourable Court to preside over this matter is ill-conceived, ill-feted and ill-founded in law. He noted that the writ of summons was issued against the PMDC for the enforcement of a lease agreement, which the PMDC had entered into (in its own name) with the Plaintiffs in this action.

He furthered that the argument in the aforementioned Supreme Court case, which ratio decidendi is the basis of Counsel for the Defendant's submission, does not have any nexus with this matter, which concerns the enforcement of a lease agreement. He noted that the thrust of the SLPP and PMDC v. The Attorney- General and Minister of Justice case, is anchored by the povisions of Paragraph (b) of Subsection (2) of Section 11 of the Political Parties Registration Act, 2002 as Amended. Meanwhile, he argued that the said provision, conerns the registration of a political party, as a condition precedent, consequent on the commencement of its functionality.

Moreover, Counsel stated that the existence of the foregoing provision in the aforementioned statute, does not amount to a shield, against litigation of a political party in our jurisdiction. He refered this

Honourable Court to Paragraph (c) of Subsection (2) of Section 11 of the aforesaid statute, making provision for a landlord and tenant relationship, between a political party and any other person. He again reiterated the point that the subject matter is 'a lease agreement', which the PMDC had entered into (in its own name) with the Plaintiffs; adding it would be unjust for a political party to rely on a law, which says it cannot be sued..

Finally Counsel referred the Court to the The Hon. Justice Miatta M. Samba's decision in *Geo-Tech Development Ltd. (Suing by their Attorney Osman Surah Kamara v. Zepyr Resources S/L Ltd. (2019)*, in which she relied on Order 7 Rule 1 of the High Court Rules, 2007, to dismiss an application, regarding a preliminary objection, which was raised about the capacity of the Defendant not to be sued in that action. However, some of the aforementioned responses, to the objection, do not really address the issue that is to be determined. First, the submission that the authority relies on does not say that an action cannot be brought against a political party, but rather says a political party cannot bring an action, is unclear and ununderstandable to this Honourable Court.

For the ratio in that case is quite clear; and was made conspicuous that a political party can neither sue, nor can it be sued in its name, because it lacks a corporate personality. Second, it does not necessarily follow

that because the PMDC entered into a lease agreement in its name as a plotical party, the other side to that agreement can enforce it in a court of competent jurisdiction, when the question of capacity in law arises. Third, the ratio in the authority cited indeed strikes a chord with this action, because if the capacity of a party to the contractual lease agreement is questionable, the question of capacity has to be first resolved; failing which, there will be no need to proceed with it; as the remedies sought cannot be granted in such circumstances.

Rather, the progression of this matter indubitably depends on the clarification of the juristic/juridical capacity of the PMDC in this action. Fourth, the references to Paragraphs (b) and (c) of Section 11 of the Political Parties Act NO. 3 of 2002 (hereinafter referred to as Act NO. 3 of 2002), do not aptly concern the objection; rather they are cognate with issues, germane to the registration of political parties, as crucial players in the governance processes of the state; according to the authority cited, they do not relate to its juristic status.

1.3 Analytical Exposition.

The question whether this Honourable Court has jurisdiction to proceed with this matter is undoubtedly the principal thrust of the objection. Nonetheless, the issue of jurisdiction is the crux of every trial. Whereas a court is bound to proceed and determine any matter that concerns its

jurisdiction; it is legally prohibited from proceeding with any matter for which the question of lack or want of jurisdiction arises. And that cannot be cured by neither of the parties to any litigation by mere acquiescence; nor by any court of competent jurisdiction.

In fact, any matter that is proceeded with, for which even a reasonable tribunal of fact does not have jurisdiction, amounts to a nullity; irrespective of its procedural congruity. The Nigerian cases of *Uzouchwu v. HRH Ezeonu II* (1991) 6 NWLR PT. P. 708, *The State v. Ogagoruwa* (1993) 2NWLR pt. P. 33, *Dr. Braithwaite v. Grassroots Democratic Movement* (1998) 7 NWLR 307 and *Okoro v. Nigerian Army Counsel* (2000) 3 NWLR 77, are very much instructive on this point.

1.3.1 Jurisdiction in Perspective.

The courts in the commonwealth jurisdiction, are constantly inundated with applications, relative to questions of jurisdiction. Thus, the courts' generic position on jurisdiction, is that which is accordingly catalogued in 1.3 above. Nevertheless, it has been established that the words: 'jurisdiction of the court', connote either 'a strict or narrow sense' and 'a broad or wide sense'. Thus, in their 'strict or narrow sense', the words actually connote the statutory limitations, imposed on the courts', in the exercise of their functions. Such limitations can resonate with the subject matter of the issues to be determined between the parties; the persons

between whom the issues are joined; or the kind of reliefs sought; or a combination of all three permutations.

Thus, in their 'broad or wide sense', the words connote that the jurisdictions of courts embrace their settled practices, regarding the manner in which they exercise their powers, to hear and determine cases, including its settled practice to grant or refuse to grant certain reliefs. Essentially, this vivid distinction is based on Rickford L. J's dictum in the celebrated case of Guaranty Trust Company of New York v. Hannay Company (1915) 2 KB at 563. Thus, it is the narrow or strict connotation of the words, which has held sway in our jurisdiction; as it was overwhelmingly approved, by our Supreme Court in the case of PMCD and the Secretary General of the PMDC (Appellants) v. the SLPP and the Chairman of the SLPP (Respondents) (SC. Civ. App 1/2007).

However, the foregoing objection, can no doubt be said to have been made in the narrow or strict sense of the words; as its compass is confined to the persons (parties) between whom the issues are joined. But what about the issues themselves (the subject matter to be resolved?). What about the reliefs being sought? These are all jurisdictional issues that should be considered in tandem with that of the parties between whom the issues are joined. Thus, it seems to me that Counsel for the Defendant has only directed his jurisdictional objection on just one of the

issues, relative to jurisdiction, to the exclusion of the others. I shall return to the issue imbedded in Counsel's jurisdictional objection, as this analysis unfolds.

1.3.2 Natural and Juridical/Juristic Persons.

Thus, the question that is to be raised at this stage, is whether the parties between whom the issues in this action are joined, are juridical/juristic persons, for purposes of this particular litigation? Thus, in English jurisprudence, the competent 'persons' that can institute civil or criminal actions are either 'natural' or 'juristic' persons. A natural person is a reasonable creature in being; and a juristic person is an institution or association/organisation, that is conferred a juridical status by law for purposes of litigation. So every juridical person, has the legal status to sue and be sued in its own name. This principle is said to be the most fundamental issue; underpinning the concept of incorporation in contemporary corporate law.

However, it is now a settled principle of law, that it is only a juridical person, that has the capacity to institute actions; and it is also against whom any action (civil or criminal) can be instituted. The Plaintiffs that originated the processes, culminating in the matter that is before this Honourable Court, are reasonable creatures in beings; they thus naturally have the juridical status to institute this action. And pursuant

to the appropriate circumstances, any action can be brought against them by any other natural or juristic person, in any court of competent jurisdiction in our jurisdiction.

Nevertheless, can the converse be said of the PMDC, which is the political party, against whom this action is brought? Should the question be answered in the affirmative; the objection will be instantaneously dismissed in its entirety and possibly with a substantial cost. Should the question be answered in the negative; then the proceedings in this action will, prima facie, amount to a nullity; and worse it can be indubitably struck out; as Counsel for the Defendant is actually demanding, pursuant to the only Sierra Leonean authority, that has so far been referenced in this ruling.

However, to answer the foregoing question, it is legally and rationally expedient, to put into context the cases of the PMCD and the Secretary General of the PMDC (Appellants) v. the SLPP and the Chairman of the SLPP (Respondents) (SC. Civ. App 1/2007) and SLPP (Plaintiff) and the PMDC) (Plaintiff) v. The Attorney General and Minister of Justice and Seven Others (SC 5/2015) (Judgement Delivered on the 8th September, 2015). The binding judicial precedents in the aforesaid cases, will guide and guard this Honourable Court, in discerning the main contentious issue, underpinning the objection, which must be determined herein.

1.4 The PMCD and the Secretary General of the PMDC (Appellants) v. the SLPP and the Chairman of the SLPP (Respondents) (SC. Civ. App 1/2007).

This case is based on an application, made by the PMDC and the Secretary-General of the PMDC, invoking the Appellate jurisdiction of the Supreme Court of the Republic of Sierra Leone, pursuant to Paragraph (b) of Subsection (1) of Section 27 of the Political Party's Act N0.3 of 2002 as Amended, regarding a decision by the Political Parties Registration Commission (PPRC), refusing to nullify or cancel the candidacy of the Late Solomon Ekuma Berewa (then Vice President), on the basis of his alleged illigibility to contest the 2007 Presidential election; as the Presidential candidate of the SLPP. The said paragraph thus reads:

Without prejudice to any other penalty prescribed by this Act or any other enactment the Commission may apply to the Supreme Court for an Order to cancel the Registration for any Political Party where that party has contravened any provision of the Constitution or this Act.

Meanwhile, in pure legal terms, this is how the foregoing main ground of appeal embedded in the Notice of Appeal was framed:

In the light of the provisions of sections 34, 35, 75, and 76 of the Constitution of Sierra Leone 1991, Act No.6 of 1991 in particular,

sections 35 (4) and 76 (1) (h) of the said constitution as well as the provisions of section 6 (1) and (2) (a-e) 14 (1) and 27 (a) and (b) of the Political Parties Act N0.3 of 2002 (as Amended), the Political Parties Registration Commission, in its decision of 21st day of July, failed to address the crucial and all-important question contained in the Appellants/Petitioners petition of section 14 (1) of the Political Parties Act N0.3 of 2002 (as Amended) and sections 35 (4) and 76 (1) (h) of the Constitution of Sierra Leone, Act N0.6 of 1991, Mr. Ekuma Berewa as Vice President of the Republic of Sierra Leone and Leader of the Sierra Leone People's Party (SLPP) in contravening the aforesaid provision.

However, it should be noted, that the Notice of Appeal was not filed, pursuant to Section 123 (1) of Act N0. 6 of 1991, concerning appeals coming from a judgments, decrees or orders of the Court of Appeal, as of right in any civil matters. Rather, it was filed, pursuant to Section 35 (7) of Act No.6 of 1991; as required by the said subsection for purposes of appeals to the Supreme Court, in circumstances, wherein an association is aggrieved, because its registration as a political party, has been denied.

Thus, in their wisdom, all five Supreme Court Judges (The Hon. Dr. Justice Ade Renner-Thomas presiding), held that the Supreme Court lacked jurisdiction to determine the application, because the said section 35 (7) does not apply to a political party, which is already registered; and the PMDC was already a registered political party. The Supreme Court further held that the PMDC did not have the legal capacity to institute the action, because it is not an 'aggrieved association'. And the PMDC's Secretary-General (the 2nd Appellant/Petitioner), also lacked capacity, because does not constitute, an aggrieved association.

Nonetheless, it should be noted, that the issue of jurisdiction, which the Supreme Court considered in this case, touches and concerns the subject matter (the issue it determined), the reliefs sought, and the capacities of the Appellants/Petitioners, to institute that particular action. The Supreme Court never, in this matter, considered whether the PMDC as a political party, does not have juridical status to institute proceedings (in its own name); and for proceedings to be instituted against it (in its own name), because it is not incorporated. This is the most contentious issue, which is the basis of the jurisdictional objection, raised by Berthan Macauley, Esq., before the Supreme Court in the undermentioned case.

1.5 The SLPP (Plaintiff) and the PMDC (Plaintiff) v. The Attorney General and Minister of Justice and Seven Others (SC 5/2015) (Judgement Delivered on the 8th September, 2015).

Significantly, a summary of the facts of the foregoing case, will no doubt help to provide the appropriate context, that aids the determination of the jurisdictional objection. Thus, on the 24th April, 2015, a Notice of Originating Motion was filed by Messrs. Tejan-Sie and Tejan-Sie, on behalf of the SLPP and PMDC, for interpretations of a plethora of provisions of Act NO.6 of 1991, whilst simultaneously requesting the Honourable Supreme Court of the Republic of Sierra Leone, to make certain declarations; and order, some specific reliefs, against eight (8) Defendants, who were accordingly holding some sensitive political positions, in the then All People's Congress (APC) Government.

However, by Notice of Motion, dated 7th May, 2015, Principal State Counsel (Lahai Farmer, Esq.), applied for the Plaintiffs aforementioned Originating Notice of Motion, to be struck out, principally because the aforesaid action, was brought in the names of the foregoing political parties; which he said, lacked juridical status in law; and therefore no action can be brought against them (in their own names); nor can they bring and sustain any action against any natural or juristic person (in their own names).

Nonetheless, on this critical thematic objection, Berthan Macauley, Esq., who appeared as Counsel for the 1st and 2nd Defendants, together with Lahai Farmer, Esq. and others, argued that Section 35 of Act NO. 6 of 1991, does not confer on political parties, the capacity to sue or be sued in their own names. Counsel stated that consequent on the said section, Parliament enacted the Political Parties Act NO.3 of 2002, which only concerns the processes of registration and the registration of political parties; noting that there is nothing in the said statute, dealing with the capacity of political parties, to sue or be sued in their own names.

Meanwhile, he strongly echoed the idea that the mere fact that an unincorporated body or association is registered under a statute, does not automatically confer on that body, the right to sue or be sued in its own name. He thus referenced a number of cases, including Bloom v. National Federation of Discharged Sailors & Soldiers NO. 2, Sols Journal and Weekly Reporter Vol. 63, Von Helfeld v. E Rechitzer & Mayer Freres & Co. {1914} CH. D 784 CA., London Association for Protection of Trade & Another v. Greenland Ltd. {1916} 2 AC HL 15, Ghana Muslims Representative Council & Others v. Salifu & Others [1975] 2 GLR, 246 CA etc.

He furthered that his protestation, does not presuppose that juridical persons, cannot bring actions against political parties; emphasizing the

idea that should any person, be inclined to do, but does not have a juristic status, that person can bring such actions in a representative capacity, by invoking the provisions in Order 18 Rules 4 and 13 of the High Court Rules, 2007.

Thus, the compasses of both provisions, are confined to the peculiarity of the circumstances, wherein representative actions can be brought, in cases where numerous persons, had the same interests, though they do not constitute an incorporated association. Thus, the Supreme Court carefully analysed the facts in the aforementioned cases, in tandem with the foregoing arguments; and unanimously struck out the application. Undisputably, this decision has indeed become a binding precedent, which every other Court of Sierra Leone's Superior Court of Judicature, is bound by on this point of law. This is essentially in accordance with the provision in Subsection (2) of Section 122 of Act NO. 6 of 1991.

2.0 Critical Context.

However, an intriguing point, raised during the arugumentations, which still strikes a chord with any reasonable creature in being is that, there had been numeorus cases, heard and determined by the same Supreme Court, pursuant to which actions, were either brought by political parties (in their own names); or against them (in their own names). The cases of *Aminata Conteh v. APC* (S C Civ. App. 4/2004) (Judgment on 27th October,

2005), Sam Hinga Norman v. SLPP & Others (S C 3/2005) (Judgment delivered on 7th September, 2006), PMDC & Another v. SLPP & Another (S C Civil Appeal 1/27) (Judgment delivered on 27th June, 2007), SLPP & Others v. Dr. Christana Thorpe & Another (S C Appeal 2/2011) (Ruling delivered on 25th May, 2012), are quite instructive on this point. These cases also constitute, the subsisting literature, which should as well serve as templates for whatever decisions, relative to the issues determined therein, by the Supreme Court, which any other Court, below the Supreme Court, in the judicial hierarchy of Sierra Leone, must reference when faced with similar issues; as like cases are bound to be determined in like manner.

Significantly, does this presuppose that because the Supreme Court, heard and determined the aforementioned cases, brought by or against political parties (in their own names), amount to a clarification that actions can be brought by or against political parties in their own names? Thus, an affirmative answer to the foregoing question, can be neatly tailored to reflect the idea that, prior to the decision in the SLPP (Plaintiff) and PMDC (Plaintiff) v. The Attorney General and Minister of Justice and Seven Others (SC 5/2015), it was legally right and justifiable for actions to be brought by or against political parties (in their own names). But does that mean that the Supreme Court conferred jurisdiction on herself in hearing and determining the aforementioned

cases, when it hadn't no jurisdiction? If that is so, how can it be reconciled with the 'narrow and strict sense' of jurisdiction, explicated in 1.3.1 above ?

However, following the decision in SLPP (Plaintiff) and PMDC (Plaintiff) v. The Attorney General and Minister of Justice and Seven Others (SC 5/2015), no other Court in Sierra Leone's judicial hierarchy, must hear and determine, any action brought by or against political parties (in their own names). This binding precedent, compels me to answer the question about whether the PMDC is a juridical person in the negative. This being the case, prima facie, I am tempted to strike out this action, with substantial cost. However, there are other jurisdictional issues, which I am as well tempted to look at. These issues relate to the subject matter to be determined and the reliefs sought.

However, whilst unpicking the contents of the writ of summons, dated 1st October 2018, commencing this action, I reckoned that the reliefs prayed for, purl around the enforcement of a lease agreement (which is contractual), entered into by the Plaintiffs and PMDC (in its capacity as a political party). In general, the provisions in Subsections (1) and (2) and the Third Schedule of the Courts Act NO. 31 of 1965, inter alia, concern the civil jurisdiction of the High Court of Justice. And Paragraph VII of the said Third Schedule, specifies the original exclusive jurisdiction of the

High Court of Justice on matters, relating to 'the specific performance of contracts between vendors and purchasers of real estate, including contracts for leases'. Meanwhile, the foregoing provisions, should be read in tandem with Subsection (1) of Section 132 of Act NO. 6 of 1991, dealing with the original exclusive (in this context) civil jurisdiction of the High Court of Justice. But to proceed with this matter as it is titled, will be tantamount to disregard for the immediately aforementioned Supreme Court decision of 8th September, 2015; even though it cannot be disputed that the remedies, which the Plaintiffs in this action seek, are neatly embedded in the original exclusive jurisdiction of this Honourable Court.

2.1 Integrative Conclusion.

Circumspectly, having considered the surrounding circumstances of the peculiarity of the facts in this case; I will refrain from striking it out for lack or want of jurisdiction. Rather, I will invoke the provisions of Order 23 Rule 7 of the High Court Rules, 2007, which reads:

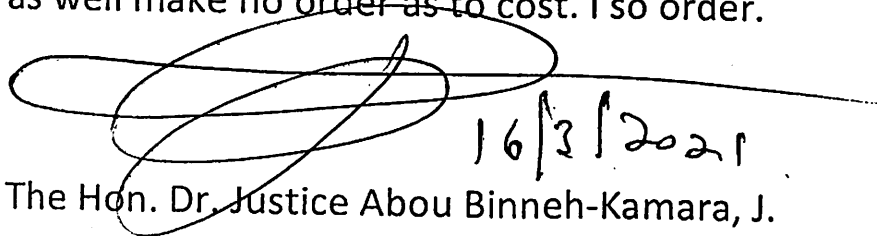
For the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings, the court may at any stage of the proceedings and either of its own motion or on the application of any party to the proceedings order any document

in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

Thu, the essence of this invocation, is for justice to be seen to be done, in a fair and just manner; and to simultaneously save this protracted matter from drowning. The evidential value of the exhibits attached to the records of this Honourable Court, depict a clear contractual relationship, subsisting between the Plaintiffs and the Defendant (PMCD in this matter. And this contractual agreement is reflected in the contents of the lease agreement, binding them. Whether such contents have been breached or not; and the consequences of that breach, if any, are matters that are to be determined, consequent on the reliefs sought in the very writ, commencing this action.

But this Honourable Court cannot at this stage veer off to their determination, without allowing the writ to be amended, pursuant to the aforementioned provision of the High Court Rules, 2007. Consequent on Order 23 Rule 7, I will order Counsel for the Plaintiffs to immediately amend the writ of summons to reflect the names of the actual representatives of the PMDC. I will as well order that Counsel for the Defendant, immediately provides the names and particulars of such representatives, to reflect the provisions of both Order 18 Rules 4 and

13 of the High Court Rules, 2007 and Sections Paragraphs (b) and (c) of Subsection (2) of Section 11 of the Political Parties Act NO.3 of 2002. I will as well make no order as to cost. I so order.

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

16/3/2021

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

Justice of the Superior Court of Judicature of

Sierra Leone.