

IN THE HIGH COURT OF SIERRA LEONE
(FAMILY AND PROBATE DIVISION)

IN THE MATTER OF THE WILLS ACT 1837
IN THE MATTER OF ORDER 37 OF THE HIGH COURT RULES 2007
IN THE MATTER OF THE ESTATE OF ALHAJI ABU BALANSEH KAMARA
(DECEASED)

AND

IN THE MATTER OF AN APPLICATION FOR PARTITION/SALE OF PROPERTY AT
NO. 4A TO 4E PATTON LANE FREETOWN AND 9, 9A TO 9C HOTTON LANE
FREETOWN AND 19A BRASS STREET, FREETOWN

BETWEEN:

UNISA KAMARA - PLAINTIFF/RESPONDENT
11 FISHER LANE
FREETOWN

AND

ALHAJI MANSO KAMARA - DEFENDANTS/APPLICANTS
MOHAMED KAMARA
MAKKA KAMARA
ALHASSAN KAMARA
9C HOTTON LANE
FREETOWN

REPRESENTATION

LAMIN M. BAYOH ESQ FOR THE PLAINTIFF/RESPONDENT
ELVIS KARGBO ESQ FOR THE DEFENDANT/APPLICANTS

BEFORE THE HON. MR. JUSTICE SENGU KOROMA -JSC
RULING DELIVERED ON 26th - September 2019

RULING

By a Notice of Motion dated the 2nd day of November, 2018, the Defendants/Applicants (hereinafter called the "Applicants") applied to this Court for the following Orders: -

1. That this Honourable Court grants an order setting aside the Originating Summons dated 15th may, 2018 and all subsequent proceedings for the following irregularities:
 - i. That the Originating Summons contravened the provisions of Order 7 Rule 3 (1) & (2) of the High Court Rules, 2007.
 - ii. That the Plaintiff lacks capacity to institute an action in respect of a purported Will dated 8th November, 1994.
 - iii. That the said action discloses no reasonable cause of action as there is no title deed showing owners of the said property.
 - iv. That the 3rd to 5th Defendants were never served the said summons
2. The application is supported by the affidavit of Alhaji Manso kamara sworn to on the 2nd day of November, 2018 together with the Exhibits attached thereto.
3. In the said affidavit in support and submissions of the Applicants Counsel, the Applicant complained of the following irregularities to wit
 - (a) That the Originating Summons contravened the provisions of Order 7 Rule 3(1) and (2) of the High Court Rules, 2007.

In paragraph 5 of the affidavit in support, the Deponent averred that "I have been informed by my Solicitor that the said Originating Summons is not in the proper form and it does not comply with the High Court Rules, 2007.
4. In his submission on this point, Mr. Elvis Kargbo for the Applicant alleged that the point had already been conceded in the affidavit in opposition and referred to Order 6 Rule 4.

This is not enough. Counsel should have argued his point and made reference to the part of the affidavit in opposition conceding to his objection. To leave the bench groping in the dark is not an effective way of raising an objection. Be that as it may, for completeness, I shall look at Order 7 Rule 3 (1) and (2). Order 7 Rule 3 (1) provides as follows: -

“Every Originating Summons shall include a statement of the questions on which the Plaintiff seeks the determination or direction of the Court or, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by Originating Summons with sufficient particulars to identify the cause of Causes of action in respect of which the Plaintiff claims that relief or remedy”.

5. ORDER 7 Rule 3(2) provides as follows:-
“Rules 4 and 5 of 6 shall apply in relation to an originating Summons as they apply in relation to a Writ”.
6. Order 6 Rule 4 cited by Mr. Kargbo relates to indorsement as to capacity and is therefore not relevant.
7. In his averment on this point, the Respondent in paragraph 5 of the affidavit in opposition averred that “Contrary to the averment contained in paragraph 5 of the affidavit in support, the anomaly on the Originating Summons is a mere irregularity and can be cured by the High Court Rules, 2007.
8. In his submission Mr. Lamin Bayoh for the Respondent submitted that they were not suing in any representative capacity. In any event, if they were, he referred to paragraph 5 of the affidavit in support and Order 23 . Rule 6 of the High Court Rules, 2007 relating to amendments.
9. I agree with Mr. Bayoh on this point. Counsel for the Applicant has failed to clearly point out the irregularity. Even in his reply, Mr. Kargbo merely said the originating Summons is not in a proper form. Why is it so, he has not said. Objections must be clear and backed by concrete Law and/or facts.

10. As regards the next point raised by the Applicants ~~next point~~, I shall briefly refer to it in paragraph 1 (iv) of the prayers to wit: "That the 3rd to 5th Defendants were never served the Summons."
11. This contention can be quickly dispatched. Mr. Kargbo has already entered appearance for and on behalf of all the Defendants including the 3rd to 5th Defendants. The application for setting aside the Originating Summons ^{was} made in the names of all of the defendants. I therefore see no merit in this claim.
12. The other irregularities complained of are really issues for trial and not to be determined summarily.
13. I am strongly of the view that this application ought not to have been made as it undermines the case management efforts of the Courts.
14. In the circumstance, the application is dismissed with costs to be borne by the Applicants to the Respondents. Such costs to be taxed if not agreed.



HON. MR. JUSTICE SENGU KOROMA -JSC