

C.C. 63/12

2012

S. NO. 5

IN THE HIGH COURT OF SIERRA LEONE
(COMMERCIAL AND ADMIRALTY DIVISION)

BETWEEN: -

KEMIL SHALLOP - PLAINTIFF

AND

MOHAMED A. SHABAN - DEFENDANT

O. Jalloh Esq. for the Plaintiff/Applicant**D. E. Taylor Esq. for the Defendant/Respondent**

RULING DELIVERED THE 11th DAY OF July 2012

This is an application by Notice of Motion dated 18th April 2012 filed on behalf of the Defendant/Applicant herein seeking an Order to set aside the writ of summons in this action dated 10th April 2012 and all subsequent proceedings thereto on the ground of irregularity, to wit,

- a) that the writ of summons offends Order 6 rule 6(b) of the High Court Rules 2007 as the said writ was never indorsed pursuant to the said Rule
- b) That the action was not properly commenced in any of the existing divisions of the High Court of Sierra Leone as there is no Commercial Division but a Commercial and Admiralty Division.

In support of the application is the affidavit of Drucil E. Taylor, Esq. Solicitor sworn to on 18th April 2012. He deposed that the writ of summons issued herein against the Defendant and amended on the 10th April 2012 did not bear the mandatory indorsement for a liquidated demand as in this case

pursuant to Order 6 rule 6(b) of the High Court Rules 2007 and is therefore irregular. Further that the action was not properly commenced in any of the existing divisions of the High Court of Sierra Leone as there is no Commercial Division but a Commercial and Admiralty Division. He urged the court to strike out the writ.

Counsel for the Defendant/Applicant submitted that the defects are fundamental and a sufficient reason for setting aside the writ. He argued that the insertion of the relevant indorsement pursuant to Order 6 rule 6(b) of the said Rules provides the Defendant the opportunity to avoid costs if within the time limited for entering appearance it pays the amount claimed. Counsel relied on the notes found in the Supreme Court Practice 1999 which state that non-compliance with this rule is a sufficient ground for setting aside a judgment obtained in default of appearance.

With regards the failure to indorse the proper division of the court, counsel referred to the Statutory Instrument No. 1 of 2007 which lists the various divisions of the High Court. He stated that the correct indorsement should have been the Commercial and Admiralty Division and that the writ was therefore not properly filed before the court.

In response to these submissions, counsel for the Plaintiff conceded that there is an error in the division of the court stated in the writ but submitted that it was not fatal as there was no doubt in which division the writ was to be filed and the Defendant was in no way prejudiced by the said error.

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He pointed out that the Defendant in his own documents had used the correct division and thus corrected the error and had thereby waived the irregularity.

Counsel for the Plaintiff in response to the submission made by counsel for the Defendant with reference to his failure to include the 14 days costs pointed out that the requirement was only necessary when the claim is for a debt or liquidated demand only. He submitted that in this case there is in addition to the claim for a debt a claim for interest. He contended that a claim for interest being unliquidated, the Plaintiff was under no obligation to insert 14 the days costs. He relied on the provisions of Order 6 rule 6(b) which specifies that the 14 days costs is to be inserted where the claim is for a liquidated demand only. He therefore prayed the court to dismiss the application.

Let me at this stage set out the provisions of Order 6 rule 6(b) relied on by counsel for the Defendant/Respondent in making this application. It states as follows:

“6 Before a writ is filed by a Plaintiff it shall be indorsed –
b) where the claim made by the Plaintiff is for a debt or liquidated demand only, with a statement of the amount claimed in respect of the debt or demand and for costs and also with a statement that further proceedings will be stayed if within the time limited for entering appearance the defendant pays the amount so claimed to the plaintiff, his solicitor or agent.”

In the notes found in the Supreme Court Practice 1999 on Order 6 rule 2(b) which is *ipsissima verba* our Order 6 rule 2 (b), it states under the rubric "Indorsement of 14 – day costs" as follows:

"In all cases where the action is to recover a debt or liquidated demand alone without any other kind of claim being joined, the indorsement of the claim must contain a claim for 14- day costs in accordance with rule 2(i)(b)."

I believe the requirement is clearly spelt here. In the statement of claim in the writ of summons herein there is in addition to the claim for a liquidated demand, a claim for interest. In the circumstance the indorsement for the 14- day costs is not obligatory.

With regards the second ground of irregularity complained of, I shall refer to Order 4 rule 1 which provides that every action commenced in the High Court shall have as part of its title an indication of the Division of the court to which it relates. In the writ of summons issued herein there is an indication of the Division of the court to which the action relates, which is the Commercial division.

I agree with counsel for the Plaintiff that there is sufficient indication in the title of which Division the action relates and the Defendant has in no way been prejudiced by the omission to indicate the full name of the Division in the title of the writ.

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No injustice has been caused the Defendant by the error on the face of the writ of summons which error has been corrected by the Defendant in his Notice of Motion filed herein.

In the circumstance the application is refused. No Order as to costs.

A. Showers

SIGNED: - A. SHOWERS 11/7/2012

JUSTICE OF COURT OF APPEAL