



MISC. 302/2015

2015

C. No. 18

IN THE HIGH COURT OF SIERRA LEONE

(COMMERCIAL & ADMIRALTY DIVISION)

IN THE MATTER OF CATERING INTERNATIONAL & SERVICES(SL)LIMITED

AND

IN THE MATTER OF AN APPLICATION MADE PURSUANT TO SECTION 354
& 359 OF THE COMPANIES ACT NO. 5 OF 2015.

BETWEEN:

CATERING INTERNATIONAL AND
SERVICES (SL) LIMITED
31 Lightfoot-Boston Street, Freetown

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PETITIONER/APPLICANT

And

FOODLAND SUPERMARKET
9 SIR SAMUEL LEWIS ROAD FREETOWN

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RESPONDENT/RESPONDENT

M. P. FOFANA ESQ.

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FOR THE PETITIONER/APPLICANT

SULAIMAN KABBA KOROMA ESQ. -

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FOR THE RESPONDENT/RESPONDENT

- i. By Notice of Motion dated the 31st March, 2016, the Petitioner applied to this Court for an interim injunction restraining the Respondent, its privies, assigns, servants, agents and representatives from levying execution on or in any way interfering with the assets of the Company etc. An interlocutory injunction was also sought for the same purpose.

Mr. M. P. Fofana, learned Counsel for the Applicant started moving the Court when S. K. Koroma Esq. Counsel for the Respondent, Foodland Supermarket interjected to say that he had a preliminary objection which goes to the jurisdiction of this Court to hear the application. The following were the grounds:

- i. That this Court is not the appropriate forum for this application to be made. He submits that Foodland Supermarket is not a party to the proceedings, as there is an action before the Hon. Justice Alusine Sesay, J.A intituled. FOODLAND SUPERMARKET AND CATERING INTERNATIONAL AND SERVICES (CC 91/15)2015 f. No. 19.

In which Foodland Supermarket is the Plaintiff and the Applicant herein is the Defendant which said action has been exhibited herein as Exhibit "B". Judgement has been given in the said matter and so whatever relief is being sought in the present application should be brought in respect of Exhibit "B".

- ii. That the Petitioner cannot seek injunctive relief in this Court in respect of a Judgement delivered by justice Sesay in respect of Exhibit "B"

- iii. That in any event, any action brought after the appointment of a Liquidator in this case Mr. David Carew should be brought in his name. In support of this, Mr. Koroma refers this court to sections 369 and 371 of the Companies Act, No. 5 of 2009.
- iv. Pa Momoh Fofanah Esq. in his response submits that the matter is properly before this Court as evidenced by the provisions of Sections 369 and 371 of the Companies Act, 2009. He argues that notwithstanding that Exhibit "B" was before Hon. Justice Alusine Sesay, but by virtue of Section 356 of the Companies Act, 2009; the question of contemporary jurisdiction does not arise. Counsel also refers this court to Section 389 of the said Act.
- v. Mr. Koroma in reply submits that his colleague has not responded to the issues raised in the objections that Foodland Supermarket is not a party to this action.
- vi. On the position of the Liquidator, he submits that the Liquidator has been given specific powers by the Court and these powers include the commencement of actions on behalf of the Company.
- vii. I shall dispose of the third grounds first to wit: whether the present action should be brought in the name of the Company or that of the Provisional Liquidator.

The Law on this point is clear. Though the conduct of the winding-up is placed by Law in the hands of the Liquidator, and on his appointment the Director's power to run the Company ceases, the Company continues in being

throughout the process of winding up: there is still corporate personality and all corporate acts in the course of litigations, such as transfer of property and the institution of Legal Proceedings are done in its name rather than by the Liquidator in his own name. The Company ceases to exist only by the formal act of dissolution after the winding-up process has been completed by removal of the name of the Company from the Register of Companies at the Corporate Commission. In support of this I refer to **CASES AND MATERIALS ON COMPANY LAW** by Lew Sealy and Sarah Worthington, 8th Edition Pages 647 to 448 and Page 679. I also refer to Section 371 (1) (a) of the Companies Act, No. 5 of 2009 which provides that:

- viii. *"The Liquidator in a winding-up by the Court shall have power with the sanction either of the Court or of the Committee of Inspection to – (a) bring or defend any action or other legal proceeding in the name and on behalf of the company".*

The order of the Court dated the 13th November, 2015 especially Number 3 (b) thereof should not be taken to mean that the Provisional Liquidator is empowered to institute proceedings in his own name as that would be inconsistent with Company Law and Practice.

- ix. Having said this as a general rule, I shall now refer you to Rule 11 of the Companies (Winding-up) Rules, 1929 which is still applicable in Sierra Leone by virtue of Practice Direction No. 1/2015. Rule 11 sub rule (1) provides that every proceeding in a winding-up matter shall be dated, and shall with any necessary additions, be intituled in the name of the Company to which it

relates and in the matter of the Companies Act, 2009 and otherwise as in forms 2 and 3.

- x. Rule 11 sub rule (2) provides that “the first proceeding in every winding-up matter shall have a distinctive number assigned to it by the Registrar in the Fast Track Commercial Court” and all proceeding shall bear the same number as the first proceeding.

From the above, it can be seen that the Petitioner/applicant has complied fully with the provisions of the Companies Act and so the preliminary objection on this ground fails.

- xi. I have carefully studied Grounds 1 and 2 and perused the provisions of Sections 354, 359 and 371 of the Companies Act, 2009 and note that the objections of Mr. Koroma herein raise very serious issues bordering on insolvency litigation. They cannot therefore be determined summarily.
- xii. In the circumstances, the applicability of the said Provisions cannot be determined at the stage as it would best serve the interest of justice for the application is heard. The Applicant is accordingly invited to move his application.



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Hon. Mr. Justice Sengu Koroma (J.A.)