

MISC.APP111/23

2023

S. NO.15

IN THE HIGH COURT OF SIERRA LEONE

BETWEEN:

IBRAHIM FAYIA SAWANEH - PLAINTIFF/RESPONDENT

AND

CHAIRMAN LAW REFORM COMMISSION -RESPONDENT/APPLICANT

SECRETARY LAW REFORM COMMISSION

ANDREW S.C. JOHNSON

RESPONDENTS/RESPONDENTS

REPRESENTATION:

M. KANNEH FOR THE PLAINTIFF/RESPONDENT

J.B. NOLDRED – FOR THE 1ST AND 2ND RESPONDENTS

G.N. KUTUBU FOR THE 3RD RESPONDENT

RULING DATED THE 24TH DAY OF JULY 2023

Before the Hon. Mohamed Alhaji Momoh-Jah Stevens, JA.

By a Notice of Motion dated the 19th day of June 2023 filed for and on behalf of the Respondents herein, same amended and served on the Plaintiff/Respondent herein, on the 20th day June 2023, seeking to strike out the Originating Notice of Motion dated the 2nd day of June 2023 instituted by the Plaintiff/Respondent against the Respondents herein. There are Eight Exhibits attached thereto. In this Notice of Motion, J B Noldred is representing the Respondent/Applicant and the 2nd Respondent.

There is also another Notice of Motion dated the 29th day of June 2023 filed and served also praying for the Originating Notice of Motion dated 2nd June 2023 to be strike out and dismissed. There are Twelve Exhibits attached to the said Notice of Motion. The 3rd



Respondent herein is the Respondent/Applicant and he is represented by G.N. Kutubu.

I shall first look at the amended Notice of Motion dated the 19th June 2023.

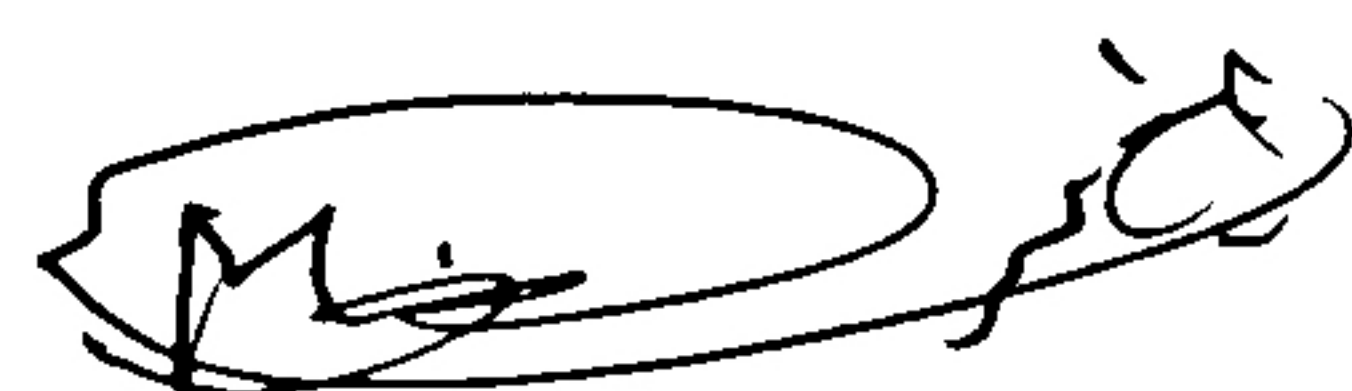
On the 4th of July 2023 this Honourable Court directed that the parties herein be served with Notice of Hearing which was slated for the 12th July 2023.

On the 12th July 2023, Counsel representing the Chairman, Law Reform Commission and the Secretary, Law Reform Commission was present, Counsel G.N. Kutubu representing the 3rd Respondent was present. The 2nd and 3rd Respondents were also present.

Counsel Representing the Plaintiff/Respondent M. Kanneh was present. The Plaintiff/Respondent herein, was also present. The 1st Respondent/Applicant absent

Before the commencement of proceedings, this Honourable observed that there was no Affidavit in Opposition to the Notice of Motion dated the 19th June 2023 and there was no Affidavit in Opposition to the Notice of Motion dated 29th June 2023. This Honourable Court thereafter directed Counsel for the Plaintiff/Respondent that if there was going to be an Affidavit in Opposition then same must be filed and served on or before the 17th July 2023. This Honourable Court gave direction for trial to continue. Counsel for the 1st and 2nd Respondents started moving the Notice of Motion dated the 19th June 2023. I have to adjourn the matter to the 17th July 2023 so that Plaintiff/Respondent would have an ample time to file an Affidavit in Opposition or take any other legal step in these proceedings.

Before the adjournment, I wanted to adjourn to the 13th July 2023, but Counsel for the Plaintiff told the Court that he is bereaved and that he was proceeding to the provinces to settle things out there



and will be in Court on the 17th July 2023. I have to grant the request of Counsel for the Plaintiff.

On the 17th July 2023, I was in disposed by reason of the fact that I was in a panel in the Supreme Court, so I thereafter advice the Court Registrar to adjourn the matter to the 18th July 2023.

At the hearing of the 18th July 2023, I noted that Counsel for the Plaintiff/Respondent was absent and no reason was even proffered for the non-appearance of Counsel for the Plaintiff/Respondent. The Plaintiff/Respondent was present and mainly informed the Court that his Counsel was not coming.

This Honourable proceeded to hearing Counsel representing the 1st and 2nd Respondent herein on the Notice of Motion dated the 19th July 2023. In the said Notice of Motion, the following Orders are prayed for:

- 1- That the Originating Notice of Motion dated the 2nd June 2023 be struck out on the following grounds:
 - a- that the said action is an abuse of the process of the Court.
 - b- that the said action is malicious and vexatious.
 - c- that the Plaintiff/Respondent does not have a cause of action against the 1st 2nd and 3rd Respondents.
 - d- that the Plaintiff lacks capacity to bring these proceedings.
 - e- for not complying with Order 8 rule 4 sub-rule 4 of the High Court Rules 2007 as the said process was never sealed by the Master & Registrar of the High Court and so was never issued.
- 2- That the proceedings in the matter herein be stayed pending the hearing and determination of this application.
- 3- Any further or other orders that this Honourable Court may deem fit and just.
- 4- That the costs of this application be borne by the Plaintiff/Respondent.



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In support of the said Notice of Motion is Affidavit in Support sworn to by Yada Hashim Williams on the 19th day of June 2023 and there Eight Exhibits attached thereto.

Exhibit A – is the Appointment Letter of the 1st Respondent as Chairman of the Law Reform Commission

Exhibit B- is a Memo from the Law Reform Commission to the sitting Commissioners notifying them of a scheduled Interview.

Exhibit C- are the Terms and Condition of the Plaintiff's Appointment.

Exhibit D- are the Terms and Condition of another Commissioner's Appointment.

Exhibit E- is a Letter inviting the Commissioners to a meeting of the Commission.

Exhibit F- is a Letter written by the Plaintiff to the Secretary to the President.

Exhibit G- is a copy of the Plaintiff's Originating Notice of Motion dated the 2nd day of June 2023

Exhibit H- is a print out of the Plaintiff's text message on a WhatsApp forum.

The 2nd Respondent also sworn to an Affidavit in Support on the 4th day July 2023 to the Notice of Motion dated the 19th day of June 2023.

Exhibit I- is a copy of Vacancy Appointment of the Law Reform Commission on a Newspaper

Exhibit J- is the same as Exhibit B

Exhibit K- is the copy of the Appointment Letter of the Plaintiff

Exhibit L- are excerpts of meeting held by the Commission on the 2nd day of June 2023.



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Legal Submission by J.B. Noldred:

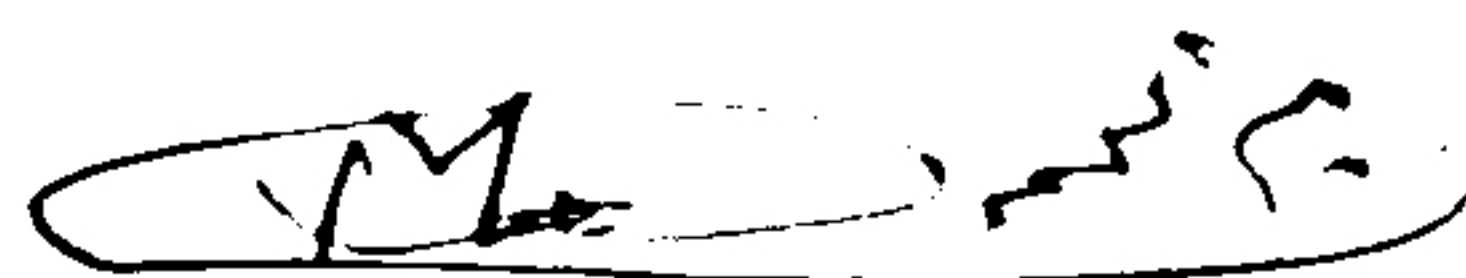
According to Counsel for the Applicant/Respondent and the 2nd Respondent, herein, Exhibit G which is the Originating Notice of Motion dated the 2nd June 2023 does not bear the seal of the Master & Registrar of the High Court for such an originating process to be instituted in the High Court. Counsel rely on Order 8 Rule 4 sub rule 4 of the High Court Rules 2007, I shall quote same verbatim:

“Every notice of an originating motion shall be issued out of the Master’s office or District Registry and shall be seal by the Master or District Registrar and upon its being sealed shall then be deemed to be issued”.

Counsel Noldred rely on the case of Foday Momoh Gulama and another Vs. Samuel Nagati Gulama and Others dated the 22nd November 2012. Here Counsel Noldred submitted that despite the fact that Order 9 Rule 2 sub rule 2 of the High Court Rules 2007 was referenced by Justice P.O. Hamilton, dealing with another form of process, nonetheless, Order 8 Rule 4 sub rule 4 of the High Court Rules 2007 bears the same strength in law. Counsel Noldred, further cited a Nigeria case Oshiomhole and Others vs. Fulani and Others 2019 where an analogous principle of law was established by the Court, that ‘A Writ without a Master’s Seal is incompetent and cannot be cured.’

Upon a careful perusal of the said Originating Notice of Motion, I see no Seal of the Master and Registrar of the High Court on same. I hold that it is fatal in any Civil Proceedings instituted in the High Court taking out any of the processes under Order 5 Rule 1 of the High Court Rules 2007, without the Seal of the Master and Registrar thereon.

Counsel Noldred canvassed this Honourable Court further that the 3rd Respondent herein was even approved by the Law Reform Commission as Director of Research even before the



Plaintiff/Respondent was appointed as a Commissioner on the 15th May 2023. The 3rd Respondent and other applicants were scheduled for a meeting on the 8th May 2023 and on the 2nd June 2023, the 3rd Respondent was confirmed and appointed by the Law Reform Commission as Director of Research. The Plaintiff/Respondent was appointed by the President on the 15th May 2023. See Exhibit K of the Affidavit in Support of the Notice of Motion dated the 19th June 2023.

This Honourable Court adjourned this case to the 19th July 2023 and made it clear that Counsel for the Plaintiff/Respondent was obliged to be in attendance.

On the hearing of the 19th July 2023, Counsel for the Plaintiff/Respondent was again absent. The Plaintiff/Respondent was present. Counsel for the 1st, 2nd and 3rd Respondents were present. 2nd and 3rd Respondents were present. 1st Respondent was absent.

No reason was proffered by Counsel for the Plaintiff for his non-appearance. All the Plaintiff/Respondent said was 'his lawyer was not coming'. This Honorable Court proceeded with hearing nonetheless.

Counsel for the 1st and 2nd Respondents made reference again to Exhibit K which is the Appointment Letter of the Plaintiff/Respondent. But by Exhibit C, the Appointment of the Plaintiff does not commence until he reported for duty. Counsel reminded the Court that the Interview conducted by the Law Reform Commission preceded the appointment of the Plaintiff which is dated the 15th May 2023. I again agree with Counsel for the ~~2nd~~^{1st} and ~~2nd~~^{2nd} Respondents that Exhibit K which is the Appointment Letter of the Plaintiff/Respondent only takes effect upon the date the Plaintiff/Respondent reported for duty.

Counsel reference the case of SLAJ vs Attorney General and another 2009, as a principle of law that the Plaintiff has no standing in this matter and the Court as well does not have jurisdiction to hearing



the application of the Plaintiff. Another authority cited by Counsel is the case of Letang vs. Copper 1961, on which the Plaintiff has no right to bring an action. Case was thereafter adjourned to the 20th July 2023.

On the 20th July 2023, the Legal Firm Jabbie and Associates, wrote a Letter to this Honourable Court informing this Court about the status of the plaintiff's Solicitor who will be absent and even the Plaintiff/Respondent will also will be absent because the Plaintiff/Respondent 'is involved in some other chambers matters'.

It must be noted that the said Letter written by Jebbie and Associate is dated the 19th July 2023 but this Court only received same on the hearing of 20th July 2023. The Plaintiff/Respondent was in Court on the 19th July 2023 and nothing was known about the said Letter of excuse. To me this Letter dated the 19th July 2023, seems discourteous and demeaning to the Court. It seems to me as if this Court is callous to the plight of the Counsel to the Plaintiff/Respondent. Not at all, Counsel for the Plaintiff on the 12th July 2023, committed himself to be present on the next adjourned which was on the 17th July 2023. On the 17th July 2023, the Trial did not even proceed since I was in the Supreme Court. As regards, the excuse given for the non- appearance of the Plaintiff from this very Letter (which I considered as back dated as the Plaintiff was in Court on the very 19th July 2023 and no reference to same was made throughout the hearing of that day), is unfortunate. To write the High Court and inform this Court, that you will not be coming because you have some 'Chambers matters', without any specificity as to the so called 'chambers matters' is most unfortunate. The Plaintiff is reminded that once you are represented in a civil suit you are not bound to attend.

This trial continues on the 20th July 2023. Counsel for the 1st and 2nd Respondents Present, Counsel for the 3rd Respondent present.



Respondent /Applicant absent, Counsel for the Plaintiff/Respondent absent and Plaintiff/Respondent absent.

Counsel Noldred referenced Exhibit H, (a print out of the Plaintiff's text message on a WhatsApp forum' as being malicious and vexatious and grounded in absolute malice and hatred for both the 1st Respondent/Applicant and the 3rd Respondent because these Respondents are perceived not to be supporters of the present political structure. Counsel argued that the position of Chairman Law Reform Commission, is a Professional position without any political agenda. Counsel refer to Section 2 sub section 1 a of the Law Reform Commission Act 1994 as a person can only be appointed if he is qualified to hold the highest judicial office. I agree with Counsel that the Law Reform Commission is not a Political Office and its existence cannot affect the Government by any means. In fact, the Law Reform Commission will in my humble view promote amendments of good laws for the consideration of 'Cabinet Conclusion' thereafter same sent to Parliament by the Executive Arm for enactment.

Counsel further referenced Exhibit F which is a Letter inviting the Commissioners to a Meeting. However Counsel maintained it is obvious malice because the representative of the Attorney General was not sued, but only the 1st and 2nd Respondents.

Counsel Noldred, further submitted that by the failure for the Plaintiff/Respondent, a Representative of the Sierra Leone Bar Association to recourse to the Bar, is an Abuse of Process, 'merely trying to use the lawful processes of this Court for his own purposes'. Counsel reference Halsbury 's Laws of England Volume 11, the sub rubric Abuse of Process.

Counsel for the 1st Respondent/ Applicant herein and the 2nd Respondent concluded by stating that the suit by the Plaintiff is groundless because if the Plaintiff had sought clarification from the Law Reform Commission or even attended the Meeting convened on

the 2nd June 2023 there would not have been any Court case before this Court. Counsel Noldred further referenced the representative of the Judiciary , Justice Eku Roberts JSC as indicating in Exhibit L , that the Secretariat is responsible for the recruitment of Staff. This position Counsel buttress with Section 5(3) of the Law Reform Commission Act 1994, as the Secretary to the Commission is responsible for the administration of the Commission. Counsel submit that the action of the Plaintiff/Respondent "is to harass and cause embarrassment to the Respondents". In support of that assertion Counsel referenced the case authorities of Broxton vs. McClelland 1995, Prince Kashamu Vs. Attorney General of Nigeria 2013.

Counsel asked that costs be taxed pursuant to Order 57 Rule 2 sub rule 6 of the High Court Rules 2007 as his Clients have been embarrassed which has set their reputation on the line.

Counsel for the 3rd Respondent ,G.N. Kutubu , also moved a Notice of Motion dated the 29th June 2023 for and on behalf of the 3rd Respondent/Applicant therein. The prayers therein mirrored the Notice of Motion dated the 19th June 2023 moved before this Court by Counsel for the 1st and 2nd Respondents herein. Counsel for the 3rd Respondent adopted the submission of Counsel for the 1st and 2nd Respondents on behalf of his client the 3rd Respondent herein Andrew Johnson. There are Twelve Exhibits attached to the Notice of Motion dated the 29th June 2023 sworn to by Andrew Johnson, the 3rd Respondent herein.

Exhibit A is the Vacancy Appointment of the Law Reform Commission.

Exhibit B- is the Application for the position of Director of Research by the 3rd Respondent at the Law Reform Commission.

Exhibit C- is the Appointment Letter of the Plaintiff/Respondent herein dated the 15th May 2023.



Exhibit D is an Appointment Letter of another Commission of the Law Reform Commission appointed by the President

Exhibit E is the Terms and Conditions of Service as Member of the Law Reform Commission of the Plaintiff/Respondent

Exhibit F is the Terms and Conditions of Service of another Member of the Law Reform Commission.

Exhibit G is notice to the Commissions of the Law Reform Commission of a Meeting scheduled the 2nd June 2023.

Exhibit H is a message sent to the Plaintiff/Respondent reminding him of the scheduled meeting on the 2nd June 2023.

Exhibit I is excerpts of Meeting of the Law Reform Commission conveyed on the 2nd June 2023.

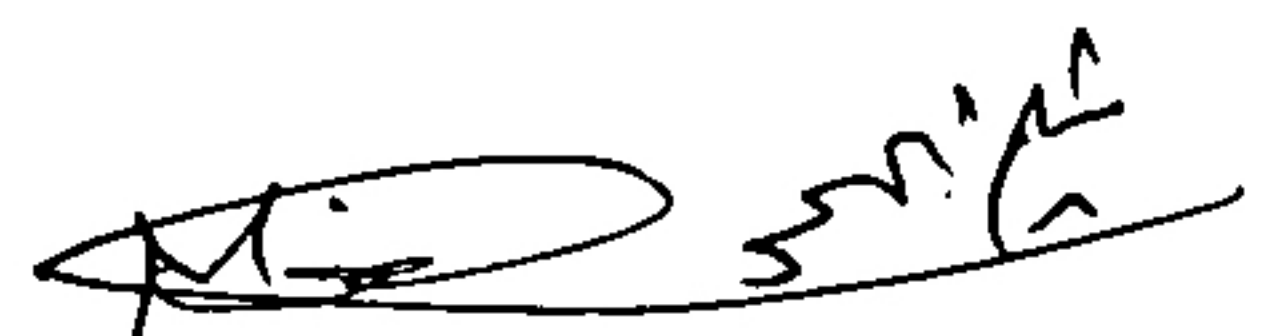
Exhibit J is a Letter written to the Secretary to the President by the ~~1st~~ Plaintiff/Respondent complaining of violation of the Section 3(4) of the Law Reform Commission Act

Exhibit K is the Originating Notice of Motion instituted against the Respondents herein by the Plaintiff.

Exhibit L is a WhatsApp message of the Plaintiff/Respondent sent to a forum.

On the 21st June 2023, the matter was adjourned for the other side to be heard, that is the case of the Plaintiff/Respondent. The case called at 11am prompt, the Plaintiff/Respondent was absent. The Plaintiff only showed up after the case file has been withdrawn for a ruling. The Plaintiff stood at the entrance of my chambers saying that he now wants to represent himself, I told the Plaintiff, the file has already been withdrawn for a ruling and he left.

It seems to me from genesis of hearing of the Notice of Motion dated the 19th June 2023 and the hearing of the Notice of Motion dated the 29th June 2023, the Plaintiff/Respondent is not prepare for trial, no



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Affidavit in Opposition was filed and served, no other legal steps were taken.

This is a very simple case to decide, there is no Affidavit in Opposition filed and served by the Plaintiff/Respondent up to the time the file was withdrawn for Judgment.

I agree with the argument canvassed for and on behalf of the Respondents herein that the action instituted by Plaintiff must not be entertained by this Court and same must not be heard by the High Court of Sierra Leone because it is an abuse of process, the Plaintiff lacks capacity, the said action is vexatious and malicious with the sole intention to harass the personality of the Respondents herein and even demean them very little in the eyes of right-thinking members of our society.

Another point is the Letter Written by the Plaintiff/Respondent complaining the Chairman, Law Reform Commission and some other Commissioners of the Law Reform Commission to the Secretary to the President of the Republic, as completely out of place. I hold that the very Letter must be discountenance by the Secretary to the President, because it seems to me that that the very Letter is questioning the authority of the President to make a statutory appointment of a person who is equally qualified to hold the highest judicial office in the jurisdiction. This Honourable Court therefore hold that the said Letter written to the Secretary to the President – which is Exhibit F of the Affidavit in Support to the Notice of Motion dated 19th June 2023 is of no moment and must be disregarded by the Secretary of the President of the Republic of Sierra Leone.

In my humble legal view, the Law Reform Commission is a Statutory Body created by Law and if there is any disagreement amongst its members, the best solution is to resolve it as a family and move on, as Commissioners have Terms of Conditions of Service. The

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Chairman, Law Reform Commissioner, the other Commissioners are appointed by the President of the Republic in good faith with the hope that they will deliver within the 'Terms and Conditions of Service'.

For the forgoing reasons canvassed, I hereby strike out and even dismissed in its entirety the Originating Notice of Motion dated the 2nd day of June 2023 instituted by the Plaintiff/Respondent against the Respondents herein, as baseless and of no moment and shall not be entertained in this Court.

I therefore enter Judgment for the Respondents herein on the Notice of Motion dated the 19th June 2023 and the Notice of Motion dated the 29th June 2023 and I make the following Orders:

- 1- This Honourable Court enters Judgment in favour of the 1st Respondent/Applicant, the 2nd Respondent and the 3rd Respondent/Applicant herein, on the grounds that the Originating Notice of Motion dated the 2nd June 2023 is hereby struck out and even dismissed in its entirety for the following:
 - a- that the said action is malicious and vexatious
 - b- that the Plaintiff/Respondent does not have a cause of action against the 1st, 2nd and 3rd Respondents.
 - c- that the Plaintiff lacks capacity to bring these proceedings
 - d- for not complying with Order 8 Rule 4 of the High Court Rules 2007 as the said process was never sealed by the Master and Registrar of the High Court and so was never issued.
- 2- This Court orders the Plaintiff/Respondent to tender a formal apology forthwith to the 1st Respondent and 3rd Respondent as this action is ill-advised and damaging, and derogatory statements have been wrongly circulated as seen in Exhibit H of the Affidavit in Support to the Notice of Motion dated the 19th June 2023.
- 3- This Honourable orders and directs the Law Reform Commission to continue doing its work as provided for under



Law and call on the Chairman, Law Reform Commission, all the Commissioners, including Plaintiff/Respondent herein who is also a Commissioner, the Secretary and other Staff to work as a Team within the Terms and Condition of Service.

4- Costs to be taxed by the Master and Registrar if not agreed upon, same to be borne by the Plaintiff/Respondent.

Stevens JA

A handwritten signature in black ink, appearing to be 'Stevens JA', enclosed within a large, irregular oval shape.

24-7-2023