

Between:

Mrs. Lovetta Bomah

Mrs. Admire Mercier ---

Plaintiffs/Respondents

Mr. Alice Turay

12A Prince Street

Freetown

And

People's Movement for Democratic Change (PMDC) -- Defendant/Applicant

Counsel:

Boniface S. Kamara Esq. for the Plaintiffs/Respondents

Charles F. Margai Esq. for the Defendant/Applicant

Ruling on a 'Preliminary Objection' Delivered by The Hon. Dr. Justice Abou. B. M. Binneh-Kamara, on Tuesday, 13th April, 2022.

1.1 The 'Preliminary Objection' and the Responses Thereto.

when this matter comes up for hearing on Monday, 31st June 2021, Boniface S. Kamara Esq., raises what he calls a preliminary objection that counsel on the other side (Charles F. Margai Esq.) does not have any locus standi in this matter anymore. He furthers that in compliance with the directions of the ruling of this Honourable Court, delivered on the 16th March 2021, the writ of summons, commencing this action has been accordingly amended in consonance with rule 7 of order 23, rules 4 and 13 of order 18 of the High Court Rules 2007, Constitutional Instrument N0.8 of 2007 (hereinafter referred to as The HCR 2007)

and paragraphs (b) and (c) of subsection (2) of section 2 of the Political Parties Act NO.3 of 2002.

Counsel adds that the amendments are done by the deletion of the words 'Peoples Movement for Democratic Change (PMDC)' and the substitution of the names of the very persons that negotiated the registered lease agreement on behalf of the PMDC, which according to the Supreme Court decision in *The Sierra Leone People's Party (SLPP) and PMDC (Plaintiffs) v. The Attorney-General and Minister of Justice and Seven Others (S.C 5/2015)*, is not a juristic person and therefore can neither sue nor be sued in its own name. Counsel notes that it is the PMDC's Chairman (Mr. Mohammed Bangura), Secretary-General (Mr. William Tucker) and the Financial-Secretary (Mr. Keine. Fumuhi), that negotiated the registered lease agreement on behalf of the PMDC; indicating that the said persons have been served with the requisite Court's processes and the Law Firm Enor and Partners, has accordingly entered appearance. The appearance is done on 19th April 2021. Moreover, Boniface S. Kamara Esq. argues that on 3rd May 2021, a statement of defence is filed on behalf of all Defendants by the same Law Firm. Counsel submits that on the basis of the foregoing, Charles F. Margai Esq. is no longer on records as Counsel for the Defendants/Applicants; and should therefore not be heard, because he does not have any locus standi in this matter anymore.

Contrariwise, Charles F. Margai Esq., submits that he does not know whether the objection taken is a preliminary objection or a mere objection, because preliminary objections are known to be taken, immediately the court is moved by Counsel that files an application that is being heard; noting that he rather dubs the so-called preliminary objection 'a mere objection', because the court is yet to be moved in respect of either of the applications on file. Counsel furthers that it is for the court to determine, whether it is the application seeking leave to appeal; or whether it is that, which seeks to strike out the so-called amended writ that is to be proceeded with. Charles F. Margai Esq. also submits that assuming that, the objection relates to the application to strike out the amended writ of summons, that objection is thus premature and untenable; because Boniface S. Kamara Esq. seeks to oust him from this matter without predicating his objection on any point of law. Counsel additionally notes that when amendments to writ of summons are

done, they are highlighted in red, clearly depicting the scope of the amendments and how they are done.

Meanwhile, Charles F. Margai Esq. finally submits that, the names of the persons (Defendants) mentioned in the so-called amended writ of summons, are no longer members of the PMDC party; noting that there is no evidence on records that all three Defendants, are personally served with the said writ, in accordance with rule 2 of order 10 of The HCR 2007 and that the foregoing allegations have not been rebutted, so they are presumed to be factual. Counsel concludes that the objection is a charade and should be dismissed with substantial cost. In reply, Boniface S. Kamara Esq. states that Counsel on the other side has not responded to the objection; noting that the issue of personal service, does not have anything to do with the objection; and that Charles F. Margai Esq. is not the right person to say that to this court.

Counsel points to the fact that one of the substituted Defendants in the amended writ of summons is in court and it is for him to tell the court, whether an appearance or a defence has been filed on their behalf by Enor and Partners. He furthers that the court is a court of facts and procedure; stating that he needs not refer to any authority, when the facts are clear: there is thus an appearance and a defence has been filed. Counsel refutes the submission that the persons, whose names are on the amended writ of summons, are no longer members of the PMDC party; by stating that it is the said persons that negotiated and signed the registered lease agreement on behalf of the PMDC party, which the Supreme Court of Sierra Leone, says is not a juristic person {see the case of The Sierra Leone People's Party (SLPP) and PMDC (Plaintiffs) v. The Attorney-General and Minister of Justice and Seven Others (S.C 5/2015)}. He also notes that the said persons are the most appropriate to be brought to this Honourable Court, in respect of the registered agreement they entered into on behalf of the PMDC party with the Plaintiffs/Respondents; and that is in accordance with the court's directions of 16th March 2021. Finally, Boniface S. Kamara Esq. concludes that Charles F. Margai's points are insufficient to negate the contents of his objection, which he thinks this Honourable Court, should uphold and accords the appropriate cost.

1.2 The Analysis.

Having presented the arguments, as they unfolded before this Honourable Court on 31st June 2021, I must now proceed to unpick them in the context of the subsisting laws, that regulate the issues that are cognate with every bit of the arguments. However, I must state that I am impressed by the ingenuity deployed by counsel in making their seemingly convincing submissions. On the first point, as to whether the objection itself amounts to a 'preliminary objection' or a 'mere objection', I will say that the objection is an objection on a point of law that is premature to be dubbed a preliminary objection. This is simply because, procedurally, preliminary objections are certainly made, when a counsel that files an application that is already on file, is begun to be heard by a Judge either in chambers or in court, on the contents of that application. This presupposes that counsel must have moved the court on the application, for a preliminary objection to be legally raised. This is exactly what practice is and how this aspect of trite law has regulated practice in our jurisdiction. Therefore, I hold that Charles F. Margai's submission on this is simply trite, precise and overwhelmingly convincing.

So, the objection is not a preliminary objection; it is an objection on a point of law. What really disqualifies the objection from being labelled preliminary, is its timeliness. Thus, the objection cannot be said to be either eclectic nor amorphous; neither can it be said to be baseless and not founded in law. The objection is clearly and straightforwardly founded in law. This point strikes a chord with a peculiar characteristic feature of a preliminary objection. The peculiarity of that feature is rather in the incontestable legal position that preliminary objections are predicated on law and nothing else but law. The jurisprudence on preliminary objection, has evolved with a plethora of decided cases in Sierra Leone and the Commonwealth jurisdiction. Meanwhile, the salient principle, underscoring any preliminary objection is that, it must be based on a point of law; if it is to be entertained by any court of competent jurisdiction.

The Courts' decisions in *Taakor Tropical Hardware Co. Ltd. v. The Republic of Sierra Leone* (ECW1 CCJ/JUD/02/19 (2019) ECOWAS CJ1 (24TH January, 2019); *Zaria Amira Amina Mara v. Managing Director Standard Chartered Bank and Others* (FTCC 237 of 2018) (2019) SLHC 47 (11 July 2019); *Yaya v. Obur and Others* (Civil Appeal 81 of 2010) (2020 UGHC 165 (30 October, 2020); *Kassam Kousa v. Alie Basma* (CC:215/2019/C N0.31); *Lovetta Bomah and Others v. PMDC* (cc306 of

2018) 2021 SLHCL PED 27 (16 March, 2021); and *S v. Joseph Saidu Mans. And Another* (CC: 31 OF 2018 2021 SLHC LPED 27 (16 March, 2021), are unambiguously instructive on this point. In fact, a preliminary objection is not a preliminary objection, if it is based on facts, which evidential significance, can obviously be determined during the course of the proceedings.

Thus, when heard, a preliminary objection can either be disposed of immediately; or its ruling may be deferred, in circumstances wherein its determination, will undoubtedly impact the outcome of a matter {see *Yaya v. Obur and Others* (Civil Appeal 81 of 2010) (2020 UGHC 165 (30 October, 2020). Contextually, though the objection on which this ruling is based, is an objection on a point of law (and not a preliminary objection), it is bound to be determined at this stage, because the legal issues that characterize it, would have no impact on the outcome of this matter, should it proceed to its logical conclusion. The second point which must be addressed in this ruling concerns the issue of how amendments to writ of summons are done. Again, on this point, Charles F. Margai's submission is very watertight and unambiguous. The position in practice and in law is that, when amendments to writ of summonses are done, they must be highlighted in red, to make conspicuous the very the portions of the documents, containing the amendments. This could give an indication to the other side to as well amend whatever responses they might what to proffer in accordance with such amendments.

Nonetheless, what is beyond the comprehension of this Honourable Court is why should Charles F. Margai Esq. even raise this point in responding to the objection, when the copy that is in file clearly, indicates that the amendments in done to the writ of summons, commencing this action, are indeed highlighted in red? May be the copy which is served on the said counsel does not highlight the amended portions. Be that as it may, counsel should have exhibited that copy if this Honourable court to have taken judicial notice of it. Meanwhile, the third point which should be examined is whether the persons that negotiated the registered lease agreement, who are no longer members of the PMDC party, are indeed the actual persons, that ought to have been brought in a representative capacity, on behalf of the PMDC in this matter. Thus, Boniface S. Kamara Esq. insists that by virtue of the contents of the registered lease agreement, it is the actual persons

that sign it on behalf of the PMDC that should be brought to court in every circumstance, wherein the contents of that agreement are flouted.

Therefore, whether such persons are no longer members of the PMDC party or not, that is immaterial to enjoy their reversionary right to the fee simple absolute possession in respect of their estate. Charles F. Margai Esq. confutes this point as catalogued above. Thus, a number of other legal issues and principles are germane to this point. First, is the common law contractual principle of privity, which has been modified by the Privity of Contract Act of England (1999), which is not applicable in our jurisdiction, by virtue of section 74 of the Courts Act of 1965. Thus, the old common law doctrine still holds sway in Sierra Leone. The doctrine is that contractual agreements are only enforceable at law by the actual contracting parties or persons that have their permissions to do so by operation of law. In our instant case, the persons whose names have been substituted in the amended writ of summons, were the actual persons that contracted with the Plaintiffs/Respondents, on behalf of the PMDC, whose representatives can sue and be sued in their own names on behalf of the PMDC and not in the name of the PMDC {see the Supreme Court decision in *The Sierra Leone People's Party (SLPP) and PMDC (Plaintiffs) v. The Attorney-General and Minister of Justice and Seven Others* (S C 5/2015)}. The fact which Charles F. Margai Esq. presented to this Honourable Court, that has a serious implication for the common law principle of privity of contract in this circumstance is that, Mr. Mohamed Bangura, Mr. William Tucker and Mr. Keine Fumuhi, who signed the registered lease agreement are no longer members of the PMDC party.

The first question that arises at this state is how can the PDMC be held liable in circumstances, where there are violations of the contents of the registered lease agreement, when the actual persons that entered into that agreement on its behalf are no longer members of the PMDC? Again, the common law principle of termination of agency by estoppel resonates with the foregoing question. This principle states that principals that have led third parties to believe that certain persons are indeed acting as agents on their behalf, must let those third parties know (via actual notice) that they are no longer their agents, when their agency relationships are terminated. Thus, in circumstances wherein they do not factually get third parties to know that their agency relationships are terminated, the principals are estopped from holding themselves out in respect of transactions

that such agents might have entered into on behalf of their principals, even after the termination of their agency relationships {see the cases of Mahony v. East Hollyford Mining Co. (1875) L.R. 7 H.L 869; Biggerstaff v. Rowlett's Wharf (1896) Ch. 93 et.}.

Thus, it cannot be denied that there is nothing before this Honourable Court, confirming the fact that the PMDC communicated to the Plaintiffs/Respondents that the aforementioned persons, are no longer members of the PMDC party and should therefore have no business to do with them. Had there been evidence of such communication, then this Honourable Court would have ruled that they should not be the actual persons whose names should have been substituted in the amended writ of summons. So, consequent on the foregoing principles of the common law, I hold that in the circumstance, the said persons are the actual persons, against whom this action should be brought in respect of the enforceability of the contents of the registered lease agreement, which falls within the purview of the original exclusive jurisdiction of the High Court of Justice {see the Third Schedule of the Courts Act NO. 31 of 1965 and section 79 (1) and (2) of same and section 132 (1) of the Constitution of Sierra Leone, Act NO.6 of 1991}.

Moreover, the fourth issue that should be determined is the issue of personal service, which Charles F. Margai Esq. raises in his response that the said persons that have been substituted in the amended writ of summons, are not personally served with the requisite processes, in accordance with order 10 rule 2 of The HCR 2007. However, one such person is present in court and there is nothing before this Honourable Court contravening the submission that Enor and Partners have actually entered appearance for the persons, whose names are now in the face of the amended writ of summons. The questions that arise at this stage are: why are they in this Honourable Court, should they not know that they are to be here? Why are they represented by Enor and Partners if they do not know that they are bound to be in court. The representation of the said law firm on behalf of the persons, whose names are now on the amended writ of summons, presuppose that they are not represented by Charles F. Margai Esq. He is no longer representing any of the parties to this action. Therefore, I will uphold the objection and make no order as to cost. I so order. I will as well order that Enor and Partners are at liberty to proceed with this matter.

I so order.

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

Justice of Sierra Leone's Superior Court of Judicature