

Jabbie Associates of Jia-Jina Chambers of N0.17 Percival Street, Freetown, in respect of the foregoing orders, as prayed on the face of the Judge's Summons. Thus, eleven (11) exhibits are attached to the application, sworn to by Ibrahim Fayia Sawaneh Esq., marked IFS1-11. Meanwhile, exhibit IFS1 is the writ of summons, pursuant to which this action was originally commenced on 26th April, 2013. Exhibits IFS2-4 are copies of the appearance entered and memorandum of appearance entered, dated 9th May, 2013; a copy of a notice of change of solicitors, issued by Jabbie Associates, dated 7th February, 2014; and a defence and counter-claim, to exhibit IFS1.

Furthermore, exhibits IFS 5-8, are copies of the reply and defence to the counter-claim, dated 29th May, 2015; the summons for direction, dated 22nd June, 2015; a notice of motion dated 8th April, 2015, filed on behalf of the Defendant/Applicant herein in respect of the prayers, as depicted in the said exhibit; and the Court's directions, dated 4th December, 2015. Moreover, exhibits IFS 9-11 are a court order, dated 7th October, 2016, granting an interlocutory injunction against the Defendant/Applicant, without hearing him; the court order dated 6th June 2018, granting leave to the Plaintiff/Respondent to proceed with his case; and the draft proposed bundle should leave be granted, showing that the Defendant/Applicant, has a prospect for success.

Conclusively, I. F. Sawaneh Esq., relies on the affidavit in its entirety and makes the application, pursuant to Order 28 Rule 6 (3) of the High Court Rules, 2007 (hereinafter referred to as The HCR, 2007) and the Judge's Summons itself as was ordered by this Honourable Court on 4th December, 2015. Responding, E.T. Koroma Esq., condemns certain averments in the affidavit, supporting the application and takes exception to those which he says, are not only misleading, but impugning the reputation of a Judge of the Superior Court of Judicature of Sierra Leone. Counsel argues that such averments infringed on the rules, regarding what an affidavit should contain; noting that such averments are scandalous and vexatious. He urges this Honourable Court to invoke the provisions in Order 31 Rule 6 of the High Court Rules 2007, to expurgate the scandalous and vexatious paragraphs in the affidavit.

Additionally, Counsel submits that the application is short of what they are praying for. He argues that they have only exhibited a proposed compliance as seen in exhibit IFS11, which Counsel says is insufficient; adding that disclosures ought to be made with respect to the contents of the witnesses' statements. Counsel further tells the court that it is highly likely that this omission, will amount to a trial by ambush; noting that having listened to their case to its conclusion, it is the case for the defence to be accordingly presented. On that note, he calls for the statements of the witnesses to be filed in a supplemental affidavit, so that the right thing can be seen to be done in this circumstance.

In reply to E.T. Koroma's submissions, T.M. Jabbi Esq., states that Counsel has not singled out the specific paragraphs, which he says are scandalous and vexatious and should therefore be expunged, pursuant to Order 31 Rule 6 of the High Court Rules, 2007. T.A. Jabbi Esq. tells the court that her chambers in making the application, exhibited 11 solid exhibits in justification of the facts, deposed to in the affidavit; indicating why the request was made for the Honourable Chief Justice to re-assign the file to another Judge. Counsel thus submits that the paragraphs in the affidavit are neither scandalous nor vexatious; noting that the depositions were made to show reasons why a bundle was not filed at the time.

Counsel also argues that a Judge's Summons can be restored at any time before judgment; adding that Order 28 Rule 6 (3) is very instructive on this point. Counsel further submits that it cannot be said that the application is short of what they are asking for because the proposed defence does not contain any attachments of the witnesses' statements. Counsel says this is not indicative of any trial by ambush; it only gives a vague picture about what the Defendant/Applicant intends filling, should the summons for direction be restored, which pursuant to the rules, both sides are again given the opportunity to file whatever documents, they intend to rely on during the trial; adding that it is at that time that a clearer picture of the matter is given or shown, hence no party to the action will be disadvantaged, when a Judge's summons is restored.

Counsel reiterates that E.T. Koroma Esq., has told the court that he would not object to the application for the restoration of the summons for direction save for

some of the paragraphs he refers to as scandalous and vexatious; adding that that begs the question about what is expected, when a summons for direction is restored; this clearly shows that a bundle should be eventually filed, which will include witnesses' statements and all other relevant documents, relating to the case, which both sides should rely on. Counsel emphasizes that the order to restore the summons for direction, will never be prejudicial to the Plaintiff/Respondent, even though they have already closed their case.

1.2 The Analysis.

Procedurally, the application is rightly made. In general, applications in respect of restorations of summons for directions, are sanctioned by Order 28 Rule 6 (3) of The HCR 2007. And such applications are made by Judge's summonses; supported by the requisite affidavits. Contextually, the application of 20th May, 2019, praying for the foregoing orders, is quite apt and procedurally justifiable in the context of Order 28 Rule 6 (3) of The HCR 2007; as it is clearly made by a Judge's summons. Again, the affidavit bolstering the application's contents, clearly sets out the fundamental facts (strengthening the reason) why Counsel for the Applicant, feels this Honourable Court, should unreservedly grant the application.

Thus, as the issue of affidavit has emerged in this bit of my ruling, I feel obliged to address the alleged contentious issues in the affidavit, sworn to and dated 20th May 2019, by Ibrahim Fayia Sawaneh Esq. of Jabbi Associates (Jia-Jina Chambers) of NO.17 Percival Street, Freetown. Thus, Order 31 generically focuses on affidavits; their deponents (including those sworn to by illiterates and blind persons); their forms and contents; the circumstances in which the courts may permit the use of defective affidavits; the courts' actions in situations wherein affidavits are deemed scandalous and vexatious; the courts' powers to strike out affidavits, sworn to before solicitors, their agents and clerks; alterations in affidavits; how affidavits are filed; documents to be used in conjunction with affidavits (i.e. those that are attached to them) etc.¹

Nonetheless, the aspect of the foregoing issues, which the Respondent's Counsel has relied on in partial condemnation of the application is that which resonates

¹ See provisions between Rules 1 and 12 of Order 31 of The HCR, 2007.

with Rule 6 of Order 31 of The HCR, 2007, concerning the courts' power to nullify affidavits, containing scandalous and vexatious contents:

'The court may order to be struck out of any affidavit, which is scandalous, irrelevant or otherwise oppressive'.

Circumspectly, it would appear that some of the paragraphs in the affidavit (to borrow the words of the Respondent's Counsel), 'are not only misleading, but impugning the reputation of a Judge of the Superior Court of Judicature of Sierra Leone' and 'such averments infringed on the rules, regarding what an affidavit should contain'. However, the Respondent's Counsel never pointed to this Honourable Court the paragraphs in the affidavit, which he deems scandalous and vexatious. Further, whilst deconstructing the contents of the affidavit (in its entirety) for meaning and essence, I reckoned, that the Respondent's Counsel might have overstretched the meanings of the words 'scandalous' and 'vexatious'. And it does not seem to me that the words in the affidavit are either misleading or contrived to impugn the reputation of a Judge of the Superior Court of Judicature of the Republic of Sierra Leone. Should that be the case, this Honourable Court would have struck out the scandalous, irrelevant and oppressive bits of the affidavit; as it would have been deemed to have been in contradistinction to the spirit and intendment of Order 31 Rule 6 (3) of The HCR, 2007.

Of course, words are the tools of thought. The semantic values of the words used in the affidavit, are geared towards expressing a clear dissatisfaction that the interlocutory injunctive relief made by a Judge in the Applicant's absence, appeared to be counterproductive to the Applicant's case. Thus, it was against this backdrop, that the Applicant's Counsel wrote to The Hon. Chief Justice (Desmond Babatunde Edwards) for this matter to be re-assigned to another Judge. Indeed, the Chief Justice in his wisdom, deemed it reasonable to re-assign the matter. This is how this matter came before this Honourable Court for a final determination of the relief, embedded in the prayers of the writ of summons, pursuant to which this action was commenced. Nevertheless, the sensitivity of an interlocutory injunctive relief, demands that it is but reasonable for it to be made

when the other side is heard. This is simply because of the constitutional principle of 'audi alteram partem' (which literally means: 'here the other side').

Thus, an interlocutory injunctive relief is hardly granted in the absence of the other side. However, it can be granted in the absence of the other side (in peculiar circumstances) wherein the courts have sent out notices for the other side to come present their case; but have not been able to do so for reasons, which the courts might be unaware of. And it would be unfair and unjust to the courts to continue to wait for litigants, who have been made known of the dates of their matters, but have not come forth to proceed with them; without letting the courts know of the reasons for not coming. What is however unclear, from my reading of the records, is whether the Applicant received notices from the court (regarding the dates for hearing), before the interlocutory injunctive order was granted. Since this fact is unclear to this Honourable Court, it is but just for the application to be determined on its merit. The other issue, which is discernible in the response of the Respondent's Counsel, is that should the court grant the application to restore the summons for direction, that might amount to a trial by ambush, because the Respondent has closed his case and that the Applicant has not yet filed his bundle, that should contain the statements of their witnesses, which are not yet available to the Respondent. Again, the concerns that are cognate with this issue, raised by the Respondent's Counsel, will surely occasion a genuine apprehension on the part of the Respondent.

However, it is trite law that applications for the restorations of summonses for directions, can be made at any stage prior to the conclusions of trials. In this circumstance, the case of the Applicant is yet to be heard. Yes, the Respondent has led witnesses in evidence. And their respective pieces of evidence, are neatly embedded in the records of this Honourable Court. Again, as the Respondent's Counsel opines, this might have given the Applicant the opportunity to read through the Respondent's case and accordingly tailor his evidence to reflect the contents of the relief in their counterclaim. However, the wisdom of the provisions in The HCR, 2007, is geared towards addressing any form of unjustness, unfairness and unreasonableness, that a party to any action, would want to benefit from. Thus, the contents of the affidavit, supporting the application, is

clear about why the Applicant has not yet filed his bundle, containing the witnesses' statement. And those depositions in the affidavit are relevant to the facts in issue, surrounding this matter.

Should the court grant the orders as prayed in this application, the Applicant's bundle will thus be filed; alongside the statements of his witnesses. This Honourable Court will never allow such statements to be accepted as gospel's truth; without allowing their veracity to be tested under cross-examination. We must remember that evidence has to be factual. And that which is factual is indisputably true. If it is repaired or concocted, it works against the party that puts it in evidence. Falsity can hardly stand the rigors of intense scrutiny under a rigorous cross-examination. This is how the law is designed to crush falsehoods and concoctions at the alter of truth. Again, nothing precludes Counsel for the Respondent to re-call any of his witnesses, to testify to any facts or facts- issue, which might be in contention, after the Applicant would have presented his bundle, should the Application be granted. Thus, it is expected that when a summons for direction is restored, a bundle is filed containing witnesses' statements and every other document to the case of both sides, should be made available. Again, as stated earlier, the Respondent will have the opportunity to re-call his witnesses and the Applicant will as well be opportune to cross-examine them, to establish the truth of whatever additional evidence that might come in. Thus, on the basis of the foregoing analysis, I will grant the orders as prayed and simultaneously order that the cost of this application, shall be cost in the cause. I so order.

The Hon. Dr. Justice A. Binneh-Kamara, J.

Justice of the Superior Court of Judicature
of the Republic of Sierra Leone

