

JUSTICE ABDUL RAHMAN MANSARAY J.

CC. 49/2024

2024

HMW TRADING & SUPPLIES v. KAMARA & YANSANEH

H.

NO.1

IN THE HIGH COURT OF SIERRA LEONE
(LAND PROPERTY AND ENVIRONMENT DIVISION)

BETWEEN:

HMW TRADING AND SUPPLIES
35 SPUR ROAD
FREETOWN

PLAINTIFF/RESPONDENT

AND

ABIBATU KAMARA
SHEKU YANSANEH

1ST DEFENDANT/RESPONDENT
2ND DEFENDANT/APPLICANT

COUNSEL

O. JALLOH and A. KAMARA for the Plaintiff/Respondent

M. P. FOFANAH and I. BAH for the 2nd Defendant/Applicant

RULING

HONOURABLE MR. JUSTICE
ABDUL RAHMAN MANSARAY J.

21ST DAY OF MAY 2025

The Objection

1. On Wednesday the 14th of May 2025, Mr. M. Pa Momoh Fofanah, of counsel for the 2nd defendant was examining Mr. Sheku Yansanneh, DW1, in-chief, when Mr. O. Jalloh, of counsel for the plaintiff objected. He submitted that the evidence-in-chief of DW1, particularly questions leading to the whereabouts of one Mr. Mohamed Massaqoui whose name featured as the owner of plot 1 in the survey plan of ~~the~~ DW1, and the two plots of land (plot 1 – Mohamed Massaqoui and plot 2 DW~~1~~) were surveyed together, were contrary to O. 30 r.1(9)(b) of the High Court Rules, 2007.
2. Mr. Pa Momoh Fofanah submitted, in response, that the operative word in O. 30 r.1(9)(b) was “may” and same was discretionary and not mandatory. He further referred the court to O. 30 r. 1(9)(a), he submitted and emphasized that the witness statement referred to in the said provision of a witness who was called to testify formed part of that witness evidence-in-chief. He added that the plaintiff would have the opportunity to cross examine the witness. He then urged the court to dismiss the objection.
3. In reply, Mr. O. Jalloh restated his previous submission and added that the “may” in O. 30 r. 1(9)(b) did not grant a party the discretion to do as he pleased. He submitted, as regards Mr. M. Pa Momoh Fofanah’s submissions to new matters, the 2nd defendant had all the opportunity to amend his statement and therefore Mr. O. Jalloh urged the court to grant the objection. The objection is hinged on the interpretation and construction of O. 30 r. 1(9)(a) and (b) of the High Court Rules, 2007 (hereafter the Rules).

The Authorities

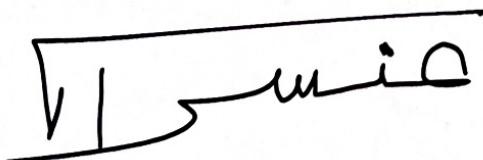
4. O. 30 r. 1(9) reads: "(9) Where the party serving the statement does call such a witness at the trial- (a) the Court may, on such terms as it thinks fit, direct that the statement served, or part of it, shall stand as the evidence-in-chief of the witness or part of such evidence; (b) the party may not, without the consent of the other party or parties or the leave of the Court adduce evidence from that witness the substance of which is not included in the statement served, except ..." I shall not reference the exceptions as they do not feature in the objection. These two paragraphs of subrule (9) need no elucidation for they are clear, simple, straightforward and unambiguous.
5. The submissions of both counsel turn down to the construction of the word "may" in paragraph (b) of subrule (9) of rule 1. There is no dispute that the said word is discretionary and put that discretion in the hands of the party calling the witness. What is contested is the use and extent of the word. I agree with Mr. O. Jalloh that the said word does not confer absolute discretion. If the party calling the witness intends to examine the witness on issues not contained in the said witness's statement he ought to do so by consent of the other party or parties or the leave of the court. In the instant case none was sought by the 2nd defendant's counsel.
6. Furthermore, paragraph (a) of subrule (9) does not confer privilege on the party calling the witness to adduce additional evidence as of course upon applying to the court for the statement of the witness to form part of his evidence-in-chief. However, the court has power to override the consent of the other party or the seeking of the leave of the court and allowed the party calling the witness to proceed and adduce additional evidence. Such power is granted to the court under rule 2

of Order 30 of the Rules. It reads: "2. The court may vary or override any of the provisions of rule 1 (except subrules (1), (10) and (13) to (17)) and may give such alternative directions as it thinks fit."

7. Conversely, the court will not, in this instant, invoke this power but makes determination on the objection. It is undisputed that the line of questions in adducing evidence-in-chief of a previous survey plan conducted by the 2nd defendant is of a substance not included in the statement of the said 2nd defendant served upon the plaintiff. Unlike paragraph (a) of subrule (9) of rule 1, where the party calling the witness adduced evidence-in-chief before seeking the court's permission for the written statement of the said witness to be part or whole of his testimony; paragraph (b) of the said subrule (9) is the reverse. The party calling the witness ought to seek the liberty of the court or the consent of the other party before evidence not contained in the written statement is adduced.

The Order

8. So, until and unless the 2nd defendant's counsel complies with paragraph (b) of subrule (9) of rule 1 of the Rules, the line of questioning or examination adopted by Mr. Pa Momoh Fofanah will not be allowed. Hence the objection is sustained.



HONOURABLE MR. JUSTICE
ABDUL RAHMAN MANSARAY J.