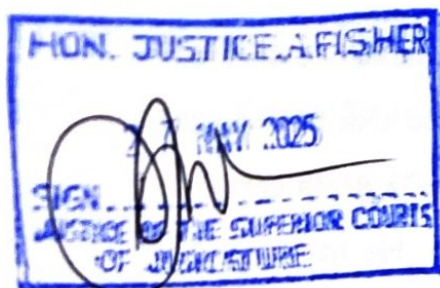


Neutral Citation Number CC.395/15 K69

(Land and Property Division)

Case No: CC 395/15

IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN
LAND AND PROPERTY DIVISION



Law Court Building
Siaka Stevens Street
Freetown
Date: 27 May 2025

Before:

THE HONOURABLE MR JUSTICE FISHER J

Between:

Lansana Kainchallay & 64 Ors

Plaintiff

-and-

Sierra Rutile Ltd

1st Defendant

African Lion Agriculture Ltd

2nd Defendant

Ms J Wellington of counsel for the 2nd Defendant

Hearing date: 22nd May 2025

APPROVED RULING

I direct that copies of this version as handed down may be treated as authentic

THE HONOURABLE MR JUSTICE FISHER J

The Honourable Mr Justice Fisher J:

1. This ruling concerns a short but important point in civil proceedings, with respect to the tendering of witness statements of deceased persons. It is perhaps necessary that I set out a short background to this application.

Background

2. In pending proceedings before me, counsel representing the plaintiffs had on the 8th day of February 2024, led a witness Thomas Sabbah who testified that he had made an additional witness statement with respect to the tendering of a death certificate of Hon Paramount Chief Madam Hawa Kpanabum, (deceased). He had sought to tender the statement when Mr B Macaulay, counsel for the defendants raised an objection to the tendering of the statement.

Submissions of Mr Macaulay for the defendant

3. Mr Macaulay predicated his objection to the statement being tendered on the basis that it offends Order 30 rule 1 sub rule 9 of the High Court Rules 2007 and CAP 26, Section 3 (3) of the Evidence (Documentary) Act, CAP 26 of the laws of Sierra Leone, 1960. Mr Macaulay argued that the law was clear as to the circumstances under which a witness statement becomes evidence. He maintained that the High Court Rules Order 30 rule 9(1)(a) has a specific provision. The witness is called, and the court directs.
4. There is a process where a witness is not called, and the court cannot direct that he is called. His primary submission rests on the point that in the absence of compliance with Order 30 rule 9 sub rule 1, the witness statement cannot be tendered.
5. He further relied upon CAP 26, the Evidence Documentary Act and submitted that counsel for the plaintiffs have argued that the interest of justice test applies. He further relied upon section 3 of the said CAP 26 and submitted that statements can be tendered in civil proceedings under certain conditions. The maker should be called subject to the exceptions set out in the Act. He went on to rely on section

3(3) of the Act. However, it would not apply if proceedings were pending and contemplated.

6. In certain circumstances, the statement of a deceased person can be tendered. CAP 26 is a statute of general application, which deals with statements generally as supposed to Order 30 which deals with witness statements. Where there is a general provision such as CAP 26 as opposed to Order 30 of the High Court Rules, Order 30 must prevail over the general provisions in CAP 26. He relied upon Benion on statutes, 5th edition sec 355 at page 1164.
7. In support of his submissions, he relied upon the case of Kamara v Coker ALR SL1957, in which reference is made to this principle and applied by the court. Notwithstanding CAP 26 which makes provisions for deceased witness statements to be tendered in civil proceedings, Order 30 is specific. Should order 30 apply in principle, the next issue is whether the statement is caught by sec 3(3) of CAP 26.
8. He relied upon Jarman v Lambert and Cooke Contractors. There is no doubt he argued that these proceedings are pending and supported his arguments with the decision in Flomien v NCM at page 248. In both cases the court constructed the Evidence Act 1838 in similar manner to CAP 26 at page 250. The question is whether CAP 26 applies to Order 30(1). The importance is the use which can be made of CAP 26. The relevant provision is order 30.

Submissions of Mr CF Margai for the plaintiff

9. Mr Margai in response submitted that none of the authorities submitted by Mr Macaulay apply. Order 30 refers to living persons and not deceased persons. The words "does call a witness" are the operative words he argued. Order 30 rule 1 sub rule 9 para 1 does not relate to a deceased person. His reply was that whether or not Order 30 rule 1 sub rule 9 of the High Court Rules 2007 has any application, which he contends it does not, it is actually dealing with human beings. The authorities cited have no application. Mr Margai then sought an adjournment to address the issues raised by Mr Macaulay.

10. Mr Margai then submitted a written response by way of a letter dated 18th March 2024. He submitted that Mr Macaulay did not direct the court's attention to section 3(2) of CAP 26 which admits such a statement and relied upon section 3(4) and 5 of CAP 26. He argued that the authorities submitted by Mr Macaulay were unhelpful to the court as all of those authorities relate to a situation where a specific procedure is in conflict with a general procedure in which case the specific procedure prevails. He therefore submitted that the objection should be overruled as lacking merit, especially when the content of the witness statement sought to be tendered is already in evidence through the evidence from the plaintiffs.

The relevant legal provisions

11. Order 30 rule 1, sub rule 9 of the High Court Rules 2007, provides, where relevant, as follows:

(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.....

12. Section 3 of The Evidence (Documentary) Act CAP 26 of the Laws of Sierra Leone, 1960, provides:

3. (1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible in evidence of that fact if the following conditions are satisfied, that is to say-

(i) if the maker of the statement either-

(a) had personal knowledge of the matters dealt with by the statement; or

(b) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and

(ii) if the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the limits of Sierra Leone and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

13. Sub section 3 provides as follows:

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

14. Mr Margai in his submissions referred to section 3 subsection 2, which he says admits such a statement. The said provision provides:

(2) In any civil proceedings, the Court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) of this section shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence-

(a) notwithstanding that the maker of the statement is available but is not called as a witness;

(b) notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof

certified to be a true copy in such manner as may be specified in the order or as the Court may approve, as the case may be.

Interpretation of the above sections

15. In order to discover the true meanings of these provisions, an exercise of statutory interpretation falls to be conducted. The starting point for consideration is that the court must recognise that it has a duty to obey legislation, as was considered in the case of *Secretary of State for the Home Department v Nasser* 2009 1 All ER 116. The court's duty is to discover the true meaning of the legislation and apply it to its determination.
16. In *PC Dr Alpha Madseray Sheriff II v Attorney General and Minister of Justice* SC No 3/2011, the Supreme Court interpreting relevant legislative provisions referred to two different rules of interpretation, which are the literal rule and Purposive rules. The court relied upon the decision of Tindele CJ in the *Sussex Peerage* case 1844 11 CL 7 F 85 in which the learned Chief Justice had this to say:
- "If the words of the statute are so plain and unambiguous, then no more is necessary than to expound them in the sense. The words themselves in such a case best declares the intention of the law giver"*.
17. This was approved by Livesey Luke CJ in *Chanrai and Co v Palmer* 1970-71 ALR SL 391 in which the learned Chief Justice has this to say:
- "In my judgement if the words used in a statute are plain and unambiguous, the court is bound to construe them in their ordinary sense having regard to the context"*.
18. In similar terms, in *Sierra Leone Association of Journalists v Attorney General and Ors*, SC.1/20, Tejan Jalloh CJ had this to say:
- "This brings me to the issue of the duties of Judges, when the question of doubt arises in a statute or constitution. Judges are expected to observe and apply the provision of the Constitution where that application has been raised in a matter and it is their duty to do so. They will be failing in that duty, if they refrain from doing so. This is where the application of the law involves questions of interpretation as to the meaning of the law*

and the purpose of its application the Court will determine the question. But if the question referred to the Court as in this case does not involve any interpretation, but its application merely it will not. On the other hand, if there is a doubt, as to the meaning to be attached to the words of the sections both in the Constitution and the Act it is the duty of the Court to give effect to their literal meaning”.

19. In interpreting Order 30 rule 1 sub rule 9, I have given the literal interpretation to the words of Order 30 which can be stated shortly”.

1. That where a party serving a statement does call such a witness at the trial;
2. The court has the discretion to direct that the statement or part of it, shall stand as the evidence in chief or part of such evidence, and
3. Evidence cannot be adduced from the witness, the substance of which is not included in the statement served, except certain conditions are met.

20. On its true construction, literally, this provision clearly applies to situations where a statement is served and the witness making that statement is called as a witness in the proceedings, it is for the court to determine the manner in which the witness statement is to be utilised either as the evidence in chief or part of it. It further deals with the manner in which the evidential stage of proceedings can be conducted outside the contents of the witness statement which has been served.

21. Applying the literal meaning, Section 3 of CAP 26, can equally be stated shortly:

1. *In any civil proceedings, where direct oral evidence would be admissible, any statement in a document is admissible in evidence where the original document is produced if a number of conditions are satisfied. These conditions are set out in section 3 subsection 1, para 1 and 2 and can be summarised as follows:*
 - i. *That the maker of the statement has personal knowledge of the matters in the statement;*
 - ii. *The document forms part of a record purporting to be a continuous record, made in a performance of a duty to record information supplied to the maker, and*

iii. *If the maker of the statement is called as a witness in the proceedings.*

II. However, subsection 1 provides a caveat and an exception to condition number 3, which provides that:

" the condition that the maker of the statement be called need not be satisfied if the witness is dead....."

22. The situation in this case is that the witness is deceased. Pursuant to subsection 1, the witness need not be called owing to the fact that he is deceased. The only issue that needs to be resolved is the issue of admissibility. The question I ask myself is firstly whether direct oral evidence would be admissible and secondly, if so, whether the statement in the document, which is the statement intended to be tendered is also admissible.

23. Section 3 subsection 1 makes such a statement admissible, if the conditions precedent in subsections i and ii are satisfied. Mr Macaulay had argued that the statement is arguably caught by the provision's subsection 3. The said section provides:

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

24. With respect to this argument, counsel has not advanced submissions to deal with this issue and I am unable at this stage to determine in accordance with the provisions of the subsection. It is unclear at this stage whether the statement of the Paramount Chief was made as a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

25. It would need to be established that the proceedings were pending or anticipated at the time the statement was made. I have examined the provisions of Section 3 subsection 2 of CAP 26 and I am satisfied it is inapplicable in this case. The witness is

unavailable and there would be no undue delay or expense caused such that the statement ought to be admissible with or without an order being made in that respect.

Disposal

26. Having considered the arguments of counsel, I now go on to consider some of the authorities. Mr Macaulay's primary submissions is as set out at page 1164 of Benion on statutory interpretation. I entirely agree with him on the principles stated on the question of general and specific provisions. However, I consider that they are inapplicable in this case. There is no mention in order 30 rule 1 about the status of statements of deceased witnesses. The use of the words "*Where the party serving the statement does call such a witness at the trial-*" in Order 30 suggests that it was the intention of Parliament, by this enactment, to regulate the procedure of witnesses who are called as witnesses at a trial. This is to suggest that the witness is available and ready to testify. There is no reference to deceased witnesses and their statements. Whilst Order 30 deals with witnesses, it is not a statute of specific application to deceased witnesses.

27. It is only CAP 26 that deals specifically with deceased witnesses and their statements and to that extent I do not consider it to be a statute of general application with respect to deceased witnesses, to that extent I do not agree with Mr Macaulay that Order 30 rule 1 is specific. It might be specific with respect to witness statements generally but when it relates to deceased witnesses, CAP 26 is of specific relevance and therefore applicable specifically to deceased witnesses and the admissibility of their witness statement.

28. I am reinforced in this view by the following passages from Benion:

"Acts very often contain general provisions which, when read literally, cover a situation for which specific provision is made elsewhere in the Act.....It is presumed that the general words are intended to give way to the particular. This is because the more detailed a

provision is, the more likely is it to have been tailored to fit the precise circumstances of a case falling within it". See page 1164

29. The reference to deceased persons in CAP 26 clearly shows the draftsman intended to deal specifically with deceased witnesses and not generally with the admissibility to witness statements of witnesses who are called at trial. I will however agree with Mr Margai's primary submission that CAP 26 provides a specific provision to deal with deceased witnesses and prevails over the general provisions of Order 30 of the High Court Rules 2007.
30. Having so held, I also agree with Mr Margai that the authorities relied upon by Mr Macaulay are unhelpful in the context of my conclusions. Whilst the principles of law established are correct, the provisions of Order 30 rule 1 sub rule 9 of the High Court Rules cannot override the specific provisions of CAP 26 dealing with the witness statements of deceased witnesses.
31. The only issue left for me to deal with is the question of whether the statement sought to be admitted offends the provisions of subsection(3) of CAP 26. The statement in question was made as an additional witness statement by Thomas Sabbah, who is PW58. In his evidence before this court, Thomas Sabbah testified he made an additional witness statement with respect to the tendering of a death certificate of paramount chief, Hawa Kpanbum of Gbangbama Imperi Chiefdom. He had served as her Chiefdom Speaker. He was present at her funeral and sought to tender the statement at which time Mr Macaulay raised an objection with respect to the statement of the deceased, which was sought to be tendered.
32. Mr Macaulay had argued that the law was clear as to the circumstances under which a statement of a deceased witness becomes evidence. The statement in question had already been disclosed in the plaintiff's bundle and that statement can be found at page 100- 102 of the plaintiff's bundle. The said statement is dated the 31st day of May 2017.

33. With respect to this issue, Mr Macaulay has relied upon the decision in *Jarman v Lambert and Cooke Contractors Ltd*, 1951, CA 255. This was a decision with respect to section 1(1) and (3) of the Evidence Act 1938 in England and Wales. The said Act provided as follows:

"In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say—

(i) if the maker of the statement either—

(a) had personal knowledge of the matters dealt with by the statement; or

(b) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and

(ii) if the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

34. Subsection (3) provided as follows:

"Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish".

35. It is noteworthy to mention that the above provisions of the Evidence Act 1938 are exactly the same as section 3 (1) and (3) of the Evidence Documentary Act CAP 26 of the laws of Sierra Leone.

36. To that extent the decision in Jarman v Lambert and Cooke Contractors Ltd is relevant with respect to the correct interpretation to be given to section 3(1) and (3) of CAP 26. In dealing with this issue, the court held that Proceedings were anticipated within the meaning of section 1(3) of the Act of 1938 when they were regarded as likely, or at the most as reasonably probable.

37. Lord Denning who agreed with the other Lord Justices, dealt with the matter aptly when he stated the following:

"To exclude this document, it is not sufficient for the defendants to say that proceedings might have been or ought to have been anticipated. They must go further and show that proceedings were, in fact anticipated. Anticipation is a state of mind whereby someone considers that something is likely to happen".

38. The statement of the witness which Thomas Sabbah is seeking to tender, and which is on page 102 and which was made on the 31st May 2017, was clearly made at a time when proceedings were pending. I am reinforced in this view by the fact that the writ of summons was issued on the 7th December 2015, which was some sixteen months before the statement was made.

39. This was clearly at a time when proceedings had been issued and were pending. The Paramount chief who made the statement was clearly an interested person when she made the statement. She was the paramount chief of Imperi chieftdom and in her capacity as paramount chief of the Chieftdom where these events took place. The defendants were operating in her chieftdom and the plaintiffs are her subjects. She is clearly an interested person for the purpose of these proceedings.

40. I have reached this conclusion upon a literal construction of section 3(3) CAP 26 of the Laws of Sierra Leone that the statement in question was made whilst

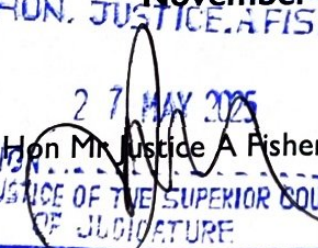
proceedings were pending and consequently the exclusion under sub section 3 applies.

41. The statement is therefore not admissible in evidence in this case as it involves a dispute of fact which the statement might tend to establish.

UPON HEARING Mr CF Margai of counsel for the plaintiffs **AND** Mr Berthan Macaulay Jnr of counsel for the defendants, **AND** upon consideration of the affidavit evidence and other documentary evidence

IT IS HEREBY ORDERED AS FOLLOWS:

1. That the objection by the defendants is sustained.
2. That the statement sought to be tendered by Thomas Sabbah is inadmissible for the reasons given above.
3. Costs shall be in the cause.
4. The matter shall be listed for a continuation of the trial on **Monday 4th**

November 2024.

The Hon Mr Justice A Fisher J
JUSTICE OF THE SUPERIOR COURTS
OF JUDICATURE