



IN THE HIGH COURT OF SIERRA LEONE
COMMERCIAL AND ADMIRALTY DIVISION
FAST TRACK COMMERCIAL COURT

CASE NO: 046/16

COMPLAINT MAGBASS SUGAR CO. LTD - PLAINTIFF

AND

M. L. MANSARAY - DEFENDANT

REPRESENTATION

ANSU B. LANSANA ESQ.

- COUNSEL FOR THE PLAINTIFF

SENGEPOH S. THOMAS

- COUNSEL FOR THE 1ST DEFENDANT

EKE A. HALLOWAY ESQ.

- COUNSEL FOR THE 2ND DEFENDANT

BEFORE THE HON. MR. JUSTICE SENGU M. KOROMA J.A
RULING DELIVERED ON THE MAY, 2016

BACKGROUND:

1. The Plaintiff/Applicant filed a Judge's Summons dated the 6th day of April, 2016 praying for certain orders. At the hearing of the application on the 18th April, 2016, Counsel for the 2nd Defendant took a preliminary jurisdictional objection on two grounds, to wit:
2. a) That the Plaintiff cannot bring an action to claim damages on the purported death of 7 passengers or any damages whatsoever as such an action can only be brought by the personal representatives of the deceased.
3. b) That the Plaintiff cannot join at this point in time the 2nd Defendant when there is no legal connection between the Plaintiff and the 2nd Defendant either in the nature of a contract or Tort.
4. c) That the 2nd Defendant was not a party to the action instituted CC 103/2014 so is unaware of any litigation touching and concerning the same subject matter and there was no notice given to the Defendant in the action FTCC 46/16 in which the 2nd Defendant is sued.
5. On the first point, Mr. Halloway, Counsel for the 2nd Defendant submitted that the Plaintiff cannot bring an action against the Defendant on behalf of the deceased persons notwithstanding that they were employees of the Plaintiff.
6. On the second point, Mr. Halloway submitted that the proper course in such a case is to join the 2nd (Defendant Insurance Company) after fault liability has been established against the 1st Defendant.

7. On the third point, Counsel for the 2nd Defendant contended that he only learnt of the discontinuance of FTCC 103/16 on the date of hearing of the present application.
8. In conclusion, Mr. Halloway submitted that the whole exercise is an abuse of process and prayed that the 2nd Defendant be struck out of the proceedings.
9. Mr. Ansu Lansana, Counsel for the Plaintiff opposed the application and submitted as follows:-
 - a) That there is a nexus between the Plaintiff and the 2nd Defendant and it is contractual, albeit vicarious. The second Defendants are the Insurers of the 1st Defendant and by virtue of the certificate of Insurance, the former undertook to cover any loss or damage caused by the latter's vehicle.
 - b) On the issue of the 2nd Defendant not being a party to the matter instituted FTCC 103/2014, he submitted that the 2nd Defendant cannot complain of not being a party to an action to which they were not included as parties.
 - c) On the third point that the 2nd party had no notice of discontinuance, the Counsel for the 2nd Defendant was referred to paragraphs 4-6 of the Affidavit of David Zeng sworn to on the 6th April, 2016.
10. In conclusion, Mr. Lansana submitted that this Court has jurisdiction to entertain the application.

11. Mr. Halloway in his reply submitted that if the 2nd Defendant is not struck out, the Court will not have jurisdiction to entertain it as filed and delivered.
12. On the submission of Counsel for the Plaintiff that the 2nd Defendant was vicariously liable to the Plaintiff, Mr. Halloway submitted that there is no master-servant relationship between them and thus vicarious liability does not arise.
13. I have listened to Counsel on both sides and noted the very scanty authorities cited in support of their respective submissions. That notwithstanding, I shall endeavor to draw on other resources to dispose of the objections raised sequentially.
14. On the first point, I note that the Plaintiff has made three claims to wit:-
 - The sum of US \$ 129,650.10 (or its equivalent in Leones) being damages for loss of a Howosimo Trailer and sugar damaged in the road accident.
 - Compensation for victims of accident.
 - Costs.
15. From the claim, it can be discerned that the Plaintiff was not only claiming compensation for the victims of the accident but also for the loss of a Howosimo Trailer and sugar damaged in the road accident. I therefore do not agree with Counsel for the 2nd Defendant that the Plaintiff cannot bring this action. The Plaintiff is the most appropriate

person to make the first claim. As regards the second claim, the Plaintiff could decide to amend the said Writ of Summons leaving out the second claim.

16. As regard the second point, I will say that although there is the hand of the liability insurer in every vehicle accident, its hand remain invincible. The prevailing general rule is that, unless provided by the policy itself a vehicle insurance company may not be made an original party to a lawsuit against its insured Defendant.
17. The Vehicle Insurance Policy has traditionally been viewed by the Courts as a contract between the insured and the insurance company. The general rule reasons that no privity of contract exists between an injured party and the tortfeasor's vehicle insurer, and therefore the injured party has no direct action against the insurer. Since the injured party has no direct right of action against such insurer, he may not join the liability insurer with the insured as a party Defendant.
18. This brings mind to Sierra Leone Court of Appeal decision in the case of Transworld Insurance Company Limited-V-Dumbuya Civ. App. 421/2007. The background to this action is that an accident occurred on the 2nd May, 2003 between a Honda Motor Cycle ridden by the Respondent and a vehicle owned by a Pastor Sahr A. Samura and insured with the Appellant company whereby the Respondent was seriously injured. An action was taken against Pastor Sahr A. Samura and an interlocutory Judgment in default of defence was entered. The

Respondent (Plaintiff then issued a Writ of Summons against the Appellant (Insurance Company) claiming the Judgment debt within the meaning of the Motor Vehicle (Third Party Insurance) Act, Cap 133. In their particulars of claim, the Appellant (Insurance Company) pleaded amongst others, that they should have been added as a party to the earlier action between the Respondent and their Insured, Pastor Sahr A. Samura which would have enabled them call expert evidence. Failure to add them to that action is fatal to the present one. The Court of Appeal, Per Browne-Marke J. A (as he then was) rejected this argument and said these words "it should be borne clearly in mind that that at the present stage of proceedings all the Respondent has to show is that there is a Judgment against the Insured in respect of the policy and also proving that due notice of the commencement of the proceedings was served on the Insurer (the Appellant). That is why the action against the Appellant is to recover the amount of his Judgment obtained against the Insured pursuant to Section 11(2) of the Motor Vehicle (Third Party Insurance) Act, Cap 133 of the Laws of Sierra Leone 1960." His Lordship was in effect ~~of~~ rejecting the argument of the Appellant (Insurance Company) that they ought to have been added as parties in the original action. This case clearly establishes the steps to be taken in any action of this nature, viz:-

- Institution of proceedings against the Insured

- Notification to the Insurer of the commencement of action against the Insured.
 - Judgment obtained against the Insured.
 - Service of the Judgment on the Insurer.
 - If the Insurer fails to honor the Judgment debt commencement of action against the Insurer for the recovery of the amount of the Judgment.
19. For the reasons given above, I hold that the 2nd Defendant cannot be a party to the action at this stage. The preliminary objection on this point is upheld.
20. The third ground for the preliminary objection is not relevant for our present purposes and I will accordingly not address it.
21. By reasons of the foregoing, I Order as follows:-
1. That the Plaintiff amends the Writ of Summons and all subsequent pleadings to remove paragraph 2 of the statement of claim.
 2. That the second Defendant is hereby struck out at this stage as a party to the action FTCC 046/16 2016 C. No 46.
 3. Costs in the cause.
 4. Matter adjourned to Thursday, 12th May, 2016 at 12:00 midday.



Hon. Justice Sengu M. Koroma J. A