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IN THE SUPREME COURT OF SIERRA LEONE

(SUPERVISORY JURISDICTION)

IN THE MATTER OF SECTION 125 OF THE CONSTITUTION OF SIERRA
LEONE, 1991

AND

IN THE MATTER OF THE UNDERMENTIONED MATTERS IN THE HIGH
COURT OF SIERRA LEONE

(a) C.C. 255/2010 2010 S No. 31
IN THE HIGH COURT OF SIERRA LEONE
(LAND AND PROPERTY DIVISION)
BETWEEN:
GENEVIEVE SHERMAN - PLAINTIFF
(As Administratrix of the estate
of Mrs Gladys Abioseh Juah Newman-Samuels (deceased))

AND

MR HARESH BUDHWANI - DEFENDANT

(b) C.C. 337/10 2010 J No. 25
IN THE HIGH COURT OF SIERRA LEONE
(LAND AND PROPERTY DIVISION)

IN THE MATTER OF THE RESPECTIVE ESTATES OF MADAM MARY
BROWNE (DECEASED INTESTATE) AND MRS GLADYS A
NEWMAN-SAMUELS (Nee WESLEY) (DECEASED)

AND

IN THE MATTER OF THE ADMINISTRATION OF ESTATES ACT
CHAPTER 45 OF THE LAWS OF SIERRA LEONE 1960 & THE
DEVOLUTION OF ESTATES ACT, 2007

BETWEEN:

MRS AYODELE THERESA JOHN (Nee WESLEY) -
PLAINTIFF/RESPONDENT

(Suing as Administratrix of the
intestate estate of MADAM MARY BROWNE

Deceased intestate through the
Plaintiff's lawful Attorney Mr Jenkins Nyka Williams)

AND

MADAM GENEVIEVE SHERMAN - DEFENDANT/APPLICANT

(Sued as the Administratrix of the
testate estate of

MRS GLADYS A NEWMAN-SAMUELS (Nee WESLEY)

CORAM:

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE

JUSTICE OF THE SUPREME COURT

THE HONOURABLE MR JUSTICE E E ROBERTS

JUSTICE OF THE SUPREME COURT

THE HONOURABLE MS JUSTICE V M SOLOMON

JUSTICE OF THE SUPREME COURT

COUNSEL:

J B JENKINS-JOHNSTON ESQ for the Applicant

M P FOFANAH ESQ for the Respondent

JUDGMENT DELIVERED THE 17th DAY OF FEBRUARY, 2016.

THE SUBSTANTIVE APPLICATION

1. By Notice of Motion dated 29th January, 2015, the Applicant applied to this Court for the following Orders pursuant to Section 125 of the Constitution of Sierra Leone, 1991.
 - i. That this Honourable Court do issue an order of certiorari, quashing the order of the Honourable Mr Justice A D Konoyima, J dated the 10th day of March, 2014 in the action intitled C C 337/10 2010 J No. 25 between MRS AYODELE THERESA JOHN vs GENEVIEVE SHERMAN currently pending in the High Court of Sierra Leone in so far as it purports to restrain the Bailiffs of the High Court from doing their lawful duty.
 - ii. That this Honourable Court do issue an order directed to the Under Sheriff of the Republic of Sierra Leone authorizing him to execute the judgment of the Honourable Mr Justice A H Charm dated 14th day of January, 2014 in the action intitled C.C. 255/2010 2010 S no. 31 Between GENEVIEVE SHERMAN vs MR HARESH BUDHWANI.
 - iii. Any further or other reliefs as this Honourable Court may deem just.

iv. That the costs of this application be borne by the Respondent.

APPLICANT'S AFFIDAVIT

2. The Application is supported by the affidavit of Genevieve Sherman deposed and sworn to 29th January, 2015. The Applicant's case as deposed to in her affidavit, is as follows: On 14th January, 2014 after a fully contested trial in the action in which she is Plaintiff, CHARM, JA now (CHARM, CJ) gave judgment in her favour, and Ordered that she immediately recovers possession of the property situate at, and known as 22 Krootown Road, Freetown. A copy of the Judgment is exhibited as "GS1". On 4th February, 2014 the Learned Justice granted her leave to issue a writ of possession. The Order of Court is exhibited as "GS2". Pursuant to such leave, she sued out a writ of possession and fieri facias on 10th February, 2014, exhibited as "GS3". She also obtained a Writ of Assistance, exhibited as "GS5" pursuant to an Order of Court dated 5th March, 2014 - exhibit "GS4". On 10th March, 2014 she was served with an Order of Court made by KONOYIMA, J, exhibited as "GS6". The Order granted an Injunction to the Plaintiff in the AYODELE THERESA JOHN matter against the Applicant herein. It restrained anyone from interfering with, entering upon, dealing in, leasing, letting or in any way disposing of the properties at 22 Krootown Road, Freetown and 18 Victoria Street, Freetown pending the determination of the action therein. The deponent deposes further that that was a separate and distinct action from that in which she had been granted possession of the Krootown Road property. She deposes further that the last mentioned Order purports to stop the Under-Sheriff and his Bailiffs from executing their lawful and constitutional duties pursuant to a judgment of a Court of competent jurisdiction, since, among other things, there has been no appeal against the Judgment of CHARM, JA (now CHARM, CJ). The writ of possession and fieri facias combined, has since not been executed. She therefore asks this Court to quash by way of an Order of Certiorari, the Order made by KONOYIMA, J on 10th March, 2014, and to direct the Under-Sheriff to execute the Judgment of the Court presided over by CHARM, JA (now CHARM, CJ).

RESPONDENT'S NOTICE OF PRELIMINARY OBJECTIONS

3. Before the Applicant's Motion could be heard by this Court, on 3 March, 2015, the Respondent's Solicitor, Mr M P Fofanah, filed a Notice

of Intention to raise and to rely on preliminary objections to the Applicant's Motion. Several objections are set out on the face of the Notice. Primarily, what Mr Fofomah is saying is that the Applicant's Solicitors have not come to this Court by the proper method. In asking this Court to issue an Order of Certiorari, (and in effect, as far as the Order sought against the Under-Sheriff is concerned, an Order of Mandamus, though it is not so stated explicitly in the Applicant's Application), the Applicant is really asking for Judicial Review of KONOYIMA, J's Interlocutory Order. An application for an Order of Certiorari is an Application for Judicial Review. It seeks to invoke the supervisory powers this Court has over subordinate Courts. And as there is no specific provision in the Supreme Court Rules, 1982 - SCR, 1982 - enabling this Court to do so, the procedure to be adopted is that to be found in Order 52 of the High Court Rules, 2007 - HCR, 2007. This is the effect of Rule 98 of the SCR, 1982. He is saying also, that the Applicant did file in the High Court, an application dated 18 June, 2014 to set aside the Order made by KONOYIMA, J on 10th March, 2014. But the Applicant's Solicitors or Counsel have failed to move that Motion in the High Court up to and until the date of filing the Respondent's Notice of Intention to raise preliminary objections. The other issues raised by Counsel in that Notice, are not, in my view, preliminary objections, but rather, reasons why this Court should not accede to the Applicant's Application herein. Whether or not the Respondent has filed an application in the High Court to set aside the Judgment of CHARM, JA as he then was, and whether or not the Applicant's Solicitors filed an affidavit in opposition to that application, and did vigorously argue against it, does not constitute, in my view, a preliminary or technical objection to the Applicant's Application herein, being heard. That is an issue that should and would be considered where we to decide these preliminary objections in favour of the Applicant. Those are issues dealing with whether or not the Applicant's Application herein has merit.

SECTION 125 CONSTITUTION OF SIERRA LEONE, 1991

4. We shall now turn our attention to the merits of these objections. The Applicant has invoked the provisions of, and in Section 125 of the Constitution as the basis of her Application. It reads as follows:

"The Supreme Court shall have supervisory jurisdiction over all other Courts in Sierra Leone and over any adjudicating authorities; and in

exercise of its supervisory jurisdiction shall have power to issue such directions, orders or writs including writs of habeas corpus, orders of certiorari, mandamus and prohibition as it may consider appropriate for the purposes of enforcing or securing the enforcement of its supervisory powers." Neither this Section, nor any other in the Constitution provides for the manner in which this supervisory jurisdiction should be exercised. This is a function assigned to the Rules of Court Committee established by Section 145 of the Constitution which reads in part, as follows:

"(1) There shall be established a Rules of Court Committee which shall consist of.....(2) Subject to the provisions of this Constitution the Rules of Court Committee may make Rules of Court for regulating the practice and procedure of all Courts in Sierra Leone, which shall rules relating to the prevention of frivolous and vexatious proceedings," Its predecessor was Section 120 of the now repealed Constitution of Sierra Leone, 1978. Subsection 120(2) of that Constitution read as follows:

"Subject to the provisions of this Constitution the Rules of Court Committee may, by Constitutional Instrument, make Rules of Court for regulating the practice and procedure of all Courts in Sierra Leone....." The Rules Committee established under that provision promulgated the Supreme Court Rules, 1982, now Constitutional Instrument No. 1 of 1982. Those Rules still apply to the procedure to be adopted in this Court, as they form part of the *"existing Law"*. Section 170 of the 1991 Constitution reads, in part as follows:

"(1) The laws of Sierra Leone shall comprise -.....(c) any orders, rules, regulations and other statutory instruments made by any person or authority pursuant to a power conferred in that behalf by this Constitution or any other law; (d) the existing law....."

(5) Subject to the provisions of this section, the operation of the existing laws after the coming into force of this Constitution shall not be affected by such commencement; and accordingly the existing law shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the provisions of this Constitution or otherwise to give effect to or enable effect to be given to any changes effected by this Constitution."

Section 176 states: *"In this Chapter (i.e. Chapter XIV), the expression*

"existing law" means any Act, rule, regulation, order or other such instrument made in pursuance of, or, continuing in operation under, the existing (i.e. the 1978 Constitution) and having effect as part of the laws

of Sierra Leone or of any part thereof immediately before the commencement of this Constitution....with such modifications, adaptations, qualifications, and exceptions as may be necessary to bring it into conformity with this Constitution as if it had been made under this Constitution."

Section 177 states: "*The existing law shall, notwithstanding the repeal of the Constitution of Sierra Leone Act, 1978, have effect after the entry into force of this Constitution as if they had been made in pursuance of this Constitution.....*"

SUPREME COURT RULES,1982

5. Lastly, as far as the applicable Rules are concerned, we must now turn our attention to the 1982 Rules made by the Rules Committee pursuant powers conferred on it in that behalf by the then 1978 Constitution. Notwithstanding the repeal of the 1978 Constitution, these Rules are still applicable to all proceedings in this Court as stated in the 1991 Constitutional provisions I have referred to in paragraph 4, supra. Rule 88 appears to prescribe the supervisory jurisdiction of the Court. It is confined to the exercise of the Court's jurisdiction when, of its own motion, it finds out, or, on a complaint made by a party to proceedings in any of the subordinate Courts, that a Judgment has been outstanding for more than three months. The procedure for seeking this particular relief is provided for therein. But Rule 98 states: "*Where no provision is expressly made in these Rules relating to the Original and the Supervisory Jurisdiction of the Supreme Court, the practice and procedure for the time being of the High Court shall apply mutatis mutandis.*" And since Section 125 of the Constitution confers jurisdiction on this Court to exercise supervisory jurisdiction over Courts subordinate to it in the manner stated therein, it is clear that if this Court's supervisory jurisdiction is invoked in any matter which does not fall within the ambit of Rule 88, i.e. an application that a judgment outstanding for more than three months in a subordinate Court be delivered with the utmost despatch, this Court must resort to the provisions in Rule 98 set out above.
6. In Sup Ct C no. 3/2015 - ALIE ESSA BANGURA v CHIEF SOMANOH KAPPEN & ORS, judgment delivered 2nd June,2015 this Court with 5 Justices sitting, (THOMAS, Ag CJ, BROWNE-MARKE, ROBERTS, SOLOMON, HAMILTON, JJSC) confirmed the judgment of this Court

with 3 Justices sitting, that specific provision is made in Rule 89 of the 1982 Rules for the exercise of this Court's Original jurisdiction, and that there was no need therefore to resort to the HCR,2007 as had been urged on the Court by Counsel for the Respondents in that case, Dr Bu-Buakei Jabbi. The reasoning of the Court of 3 Justices and of 5 Justices, respectively, is to be found in paragraphs 1 and 16 respectively, of the latter judgment.

FINDINGS

7. But the same cannot be said of an application to invoke this Court's Supervisory jurisdiction to grant judicial review of a subordinate Court's decision. Such provision as is made, is confined to the exercise of the Court's powers pursuant to Rule 88, as we have shown above. Clearly, no express provision has been made in the 1982 Rules for invoking this Court's jurisdiction to grant an Order of Certiorari. It follows that, in accordance with the provisions of Rule 98 of our Rules, the procedure to be adopted and to be used by an applicant for such an Order, is the procedure laid down in Order 52 of the HCR,2007. Since 2007, an application for an Order of Mandamus, Prohibition or Certiorari, has to be made by way of an Application for Judicial Review in the manner provided for in the said Order 52 HCR,2007. And we so find. The Applicant cannot come to this Court by way only, of an ordinary Notice of Motion.
8. We heard respective Counsel briefly in argument last year, but those arguments did not add to, nor water down what was contained in the Notice filed by Mr Fofanah, and we have therefore found no need to refer to them. At the end of arguments, I posed this question to both Counsel: "*Can this Court exercise its supervisory jurisdiction other than by way of Judicial Review?*" Mr Jenkins-Johnston's response was yes, this Court could. But he added also, if this Court so decides, he would come to this Court again by way of Originating Notice of Motion.
9. Notwithstanding the view we have taken that the Applicant has come to this Court in the wrong way, we think we must say something about the state of affairs in the High Court, with two Orders of the Court appearing to be in conflict with each other. Mr Jenkins-Johnston has argued that there is no appeal against the Order of CHARM, JA (as he then was) in the SHERMAN v BUDHWANI matter. It was a final judgment in a matter in which Counsel had not presented a case on behalf of the Defendant therein. That may be true, but the fact still remains

that the Defendant had not been heard in his defence, and on the basis of the Judgment of the Court of Appeal in *J T CHANRAI v PALMER* [1970-71] ALR SL, 391, CA, the view could be taken that what the Defendant could have done, was to have applied for that Judgment to be set aside, rather than to appeal against it. According to Mr Fofanah, in paragraph 6 of his Notice dated 27 February, 2015, the Respondent did apply to the Court below for the Judgment of *CHARM, JA* (as he then was) of 14th January, 2014 to be set aside. Arguments on both sides were heard by the then Learned Justice and Ruling was reserved.

10. On the other hand, the related case of *AYODELE THERESA JOHN v GENEVIEVE SHERMAN* is still pending before *KONNOYIMA, J.* We are of course aware that the Applicant herein has applied to this Court by way of a separate Notice of Motion for the Learned Judge to cease handling the same, as, according to Mr Jenkins-Johnston, Counsel for the Applicant in that application, the Learned Judge has refused to recuse himself from hearing the cause. Court Bundles have been filed in that case by both sides. In fact, the Applicant filed hers on 19th March, 2014. What should happen until that case is decided? If this Court were to say nothing about what should happen to the property in dispute in both cases, i.e. the property at 22 Krootown Road, pending the determination of the application which went before the Learned Chief Justice before his elevation, and the trial now pending before *KONNOYIMA, J.*, and allow the Applicant herein to regain possession of the property without any restriction or limitation whatsoever, as she wishes, we would have in effect, decided both application and cause, respectively as both relate to the same property. Notwithstanding the several declarations made by Counsel on both sides that both cases deal with different issues and are separate and distinct, the fact remains that both cases deal with the same property at Krootown Road. In one case, the Plaintiff obtained a judgment for possession of property; in the other case, the Plaintiff is saying that the person who obtained judgment for possession in the first mentioned case, is not entitled to ownership, nor possession of the same property.
11. As stated above, in answer to a question posed by the Court, Mr Jenkins-Johnston has indicated that if the Court's Ruling goes against him, he may come again by the method authorised by the Court. Until such time as does so, and we finally determine the merits of the Application herein which we shall now strike out for failure to follow the proper procedure,

we think it best that the status of the res be preserved. We think the Under-Sheriff should hold on until we decide the Applicant's Application herein on its merits, and/or await the outcome of the proceedings before KONOYIMA,J in which the Applicant has herself filed the Court Bundle. In view of the decision we have arrived at, we do not think we should make an Order as to Costs.

ORDER

12. The Order of this Court is as follows:

- i. The Applicant's Notice of Motion filed on 29th January, 2015 is struck out for non-compliance with the provisions of Rule 98 of the Supreme Court Rules, 1982 and Order 52 of the High Court Rules, 2007, respectively.
- ii. There shall be Order as to Costs.



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT



THE HONOURABLE MR JUSTICE E E ROBERTS
JUSTICE OF THE SUPREME COURT



THE HONOURABLE MS JUSTICE V M SOLOMON
JUSTICE OF THE SUPREME COURT