

Neutral Citation Number Misc. App. 1/21 C1 General and Civil Division

Case No: cc 1/2021

IN THE HIGH COURT OF SIERRA LEONE
HOLDEN AT FREETOWN
GENERAL AND CIVIL DIVISION

Law Court Building
Siaka Stevens Street
Freetown

Date: 5 November 2021

Before:

THE HONOURABLE MR JUSTICE FISHER J

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Between:

Alfred Peter Conteh **Plaintiff**
(Suing by his Attorney Rashid Santigie Sesay)

-and-

Dr Ernest Bai Koroma
Alhaji Osman Foday Yansaneh
All Peoples Congress
Political Parties Registration Commission **Defendants**
and
Dr Sylvia Olayinka Blyden **Interested Party**

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JM Jengo of Counsel for the Plaintiff
A Showers II Mansaray of counsel for the 1st defendant
AS Sesay and R A Nylander of counsel for the 2nd defendant
SK Koroma, A Macauley and OS Kamara of counsel for the 3rd defendant
Dr Blyden in Person

Hearing date: 20 October 2021

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APPROVED ORDER

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

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THE HONOURABLE MR JUSTICE FISHER J

The Honourable Mr Justice Fisher J:

1. The interested party in this matter, Dr Sylvia applies by way of a notice of motion dated the 13th day of October 2021, for a number of orders as prayed for on the face of the motion. Essentially, her primary prayer is for her to be added as a plaintiff to this action, pursuant to the provisions of Order 18 rule 6(2b) and Order 18 rule 6(3) of the High Court Rules 2007. She also prayed in aid that should the first order be granted, the originating notice of motion should be amended accordingly to include a number of the consequential orders prayed for, as set out at prayers 4 to 25 of the notice of motion.
2. The application was supported by an affidavit in support she swore to on the 13th day of October 2021, with seventeen exhibits attached. The pending matter relates to substantive application and the contempt proceedings initiated by the plaintiff in this action, Alfred Peter Conteh, against the 2nd defendant, Alhaji Osman Foday Yansaneh. Dr Blyden indicated to the court that she was representing herself and when she attempted to move her application, there was an objection from AS Sesay Esq for the 2nd defendant, as did the other defendants. Having received the indications from counsel representing the defendants, I considered it appropriate to hear the objections starting from the 1st defendant.

Submissions on behalf of the 1st defendant.

3. II Mansaray of counsel for the 1st defendant objected to the application on two principal grounds. Firstly, he argued that the pages of the affidavit are unnumbered and such a failure to number the affidavit was

in contravention of Order 31 rule 1 subrule 6. Consequently, he argued that the affidavit was defective and should be struck out.

4. Secondly, the contents of the affidavit offends order 31 rule 6 of the High Court Rules 2007, in that it contains very scandalous averments, directed at the 1st defendant. He argued that the 1st defendant should be treated with respect and that the matters relied upon by Dr Blyden are scandalous and irrelevant. He referred to paragraphs 3, 11, 14 and 15. These paragraphs are irrelevant and scandalous to the proceedings before the court. He also made a specific reference to paragraph 16 of the affidavit.
5. He also referred to paragraph 32, 47 and prayed that the court strikes out the referred paragraphs which seeks to demean the 1st defendant, who is a former president of this country, who had served the country as a parliamentarian, president and who is currently the leader and chairman of the opposition. He also prayed for the entire affidavit to be struck out.

Submissions on behalf of the 2nd defendant

6. Mr AS Sesay on behalf of the 2nd argued that the application by Dr Blyden has totally changed the face and title of the application. He relied upon Order 8 rule 4 and argued that the application was not in its proper format. He also relied upon the interpretation of the appropriate form in order 1 rule 2 of the High Court Rules 2007.
7. Secondly, he also relied upon order 18 rule 6 sub rule 2 and 3 of the High Court Rules 2007. He argued that the orders prayed for by Dr Blyden are

extraneous, fresh and some have already been litigated. Some of the issues raised border on contempt of court, which is already been litigated in the courts and to join the litigation would be in conflict with the plaintiff's case. Consequently, the motion should be struck out pursuant to Order 21 rule 17 sub rule 1 paragraph D of the High Court Rules 2007. No amendment will cure the irregularities.

Submissions on behalf of the 3rd Defendant.

8. Ady Macauley Esq, on behalf of the 3rd defendant argued that the proposed interested party has not put the notice of motion in the proper format, as required by the rules and he relied upon the fact that Dr Blyden's application contravenes Order 8 rule 4 and order 1 rule 2 of the High Court Rules 2007. The same objection applies to the affidavit which has no backing. He further argued again that the affidavit is not in the appropriate form and contravenes Order 31 rule 9 sub rule 2.
9. He further argued that with the irregularities on the affidavit, she had to have sought leave of the court to use it. He referred to Order 18 rule 6 sub rule 3 of the High Court Rules 2007 and sub rule 2 (b). He submitted that Dr Blyden had not exhibited the originating process and there is no cause of action that should necessitate the interested party being added onto the action. There is nothing before the court to guide it as to the necessity of adding the interested party to the claim. He added that the inclusion of the interested party might affect the plaintiff's claim. He added that the application by the interested party is an abuse of the process.

Submissions on behalf of the plaintiff.

10. JM Jengo esq objected to the interested party being added to the claim.

The matter has reached an advanced stage and all relevant matters have been addressed. The interested party's application offends Order 31 rule

11. There are many prayers in the interested party's application which if they were to be added, the matter would become protracted. The application was done by a non-legal practitioner, but the law must be complied with.

Submissions by Dr Blyden.

11. Dr Blyden in response to the various objections raised to her application, raised a number of issues, in particular paragraph 55,56 and 57 of my ruling dated 19th April 2021. The object of democratic governance without a functioning opposition is difficult to maintain. She relied upon paragraph 57 of my ruling of the 19th April 2021 which she considered to be germane to her application. For ease of reference, I shall reproduce the said paragraph 57.

"It is for these reasons and many more that the constitution of Sierra Leone Act No 6 of 1991, in Section 34 (4) recognises the importance of political parties by the creation of the Political Parties Registration Commission and the enactment of the Political Parties Act 2002, in the democracy of the country. Further in section 35(2) of the Constitution, a specific requirement is enacted to ensure that the internal organisation of a political party shall conform to democratic principles, and its aims,

objectives, purposes and programmes shall not contravene, or be inconsistent with, any provisions of this Constitution.

12. She relied upon the fact that the matters she seeks to raise touches and concerns the democracy of the country. She relied upon paragraph 46, 49 and 50 of the Judgement of the 19th April 2021. She submitted that the defendants had previously approached the court with similar objections which had been overruled. She submitted that the same discretion that was exercised with respect to the plaintiff's irregularities as raised by the defendant, in favour of the plaintiff, should equally be exercised in her favour, in dispensing with the defence objections. The court can exercise its discretion to amend in favour of the plaintiff and the defendants do not want her to enjoy from the same pool of discretion.

13. With respect to her submissions, she relied upon a number of authorities. I have indeed ruled on similar issues at paragraph 49 of the ruling of the 19th April 2021 previously as alluded to by Dr Blyden. I shall firstly consider the decision of the Court of Appeal in **Frances Smith v Abraham Smith civ App. 48/2017**. The Court of Appeal dealt with issues of irregularities in the form of applications to the court.

14. Justice E Taylor Kamara giving the judgement of the court had this to say:

"Most of the complaints by the appellant under this limb are technical in the sense that they are claiming procedural irregularities in the form of the originating motion. For our part, we do not agree that non-compliance with the forms nullifies the action. This is made clear in Order 2 rule 1 of the High Court Rules 2007, which provides:

Whether in respect of time, place, manner, form or content or in any other respect.... shall be treated as an irregularity and shall not nullify the proceedings or any steps taken or any document, judgement or order made therein.

15. As Dr Blyden has remarked in her submissions, this court is bound by decisions of a higher court on a point of law, in this case the Court of Appeal. The court of Appeal's decision is clear on the point. The objections raised by the 1st 2nd and 3rd defendants, save for the objections with regard to Order 31 of the High Court Rules 2007, which I shall deal with separately, are primarily objections on technical procedural irregularities based on form. Dr Blyden is clearly correct in her submissions on the point and having regard to the decision in *Frances Smith*, this court would have no hesitation in overruling the objections of the defendants in relation to the technical objections raised. I would now proceed to deal with the objections based on Order 31 of the High Court Rules 2007.

Submissions by the 1st defendant on order 31.

16. Mr II Mansaray for the 1st defendant had argued that the contents of the affidavit offend Order 31 rule 1 sub rule 6 of the High Court Rules 2007 and secondly, it also offends Order 31 rule 6 of the High court Rules 2007, as it contains scandalous materials. It is therefore expedient for me to set out the said rules relied upon.

Order 31 of the High Court Rules 2007.

17. Order 31 rule 1 sub rule 6 provides as follows:

"Every affidavit shall be bound in book form, and, whether or not both sides of the paper are used, the printed, written or typed sides of the paper shall be numbered consecutively."

18. Order 31 rule 6 provides as follows:

"6. The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive".

19. The objection in relation to Order 31 rule 1 sub rule 6 is primarily a matter of non-compliance with the rules. The question the court must apply its mind to is whether the non-compliance is such that the entire application must be struck out. Leaving aside the law and relevant legal issues, I need to firstly deal with the status of Dr Blyden as a litigant in person and the fact that she is not legally qualified.

Litigants in person and the courts approach.

20. Litigants in person are those persons who choose to exercise their right to conduct legal proceedings on their own behalf. The court must always be mindful that the right to conduct litigation, is a right, which individuals are entitled to exercise, and they must not be placed at a disadvantage if they choose to do so. Litigants in person may possess certain characteristics which a professional lawyer often do not possess. These may include:

1. Most litigants in person are stressed and worried, operating in an alien environment. They are trying to grasp concepts of law and procedure about which they may be totally ignorant.

2. They may well be experiencing feelings of fear, ignorance, frustration, bewilderment and disadvantage, especially if appearing against a represented party. The outcome of the case may have a profound effect and long-term consequences upon their life.
3. They may have agonised over whether the case was worth the risk to their health and finances, and therefore feel passionately about their situation.

21. Against this backdrop, the role of the judge is critical to the administration of justice. Judges must be aware of a number of matters which include:

1. the feelings and difficulties experienced by litigants in person and be ready and able to help them, especially if a represented party is being oppressive or aggressive.
2. Maintaining patience and an even-handed approach is also important where the litigant in person is being oppressive or aggressive towards another party or its representative or towards the court or tribunal. The judge should, however, remain understanding so far as possible as to what might lie behind their behaviour.
3. Maintaining a balance between assisting and understanding what the litigant in person requires, while protecting their represented opponent against the problems that can be caused by the litigant in person's lack of legal and procedural knowledge, is the key.

22. In determining this issue, the court must be mindful that there may be facts and circumstances in relation to a litigant in person, which the court

must take into account. An opponent of a litigant in person is entitled to assume compliance with legal rules, without expecting excessive indulgence to be extended to the litigant in person. The fact that a litigant in person did not really understand or did not appreciate the procedural course open to her in litigation, does not entitle her to extra indulgence.

23. Having regard to the above principles, it seems to me that the fact that Dr Blyden's affidavit does not comply with the provisions of Order 31 rule 1 sub rule 6 is not a proper basis for striking out the entire affidavit. The purpose of order 31 rule 1 sub rule 6, is to provide a uniform approach to affidavits in order to enable the court to understand the affidavit and its contents, hence the emphasis on the words "numbered consecutively". Dr Blyden placed heavy reliance upon Order 31 rule 4 in her submission. The said provision provides as follows:

"The Court may receive an affidavit sworn for the purpose of being used in the cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat or any other irregularity in its form; and may direct a memorandum to be made on the document that it has been so used."

24. I have looked at Dr Blyden's affidavit and whilst it does not fully comply with order 31 rule 1 sub rule 6, it is consecutively set in numbered paragraphs, and I am satisfied that there is substantial compliance with order 31 rule 1 subrule 6 and the preliminary objection with respect to that ground is overruled. In any event, order 31 rule 4 as forcefully relied

upon by Dr Blyden allows the court to receive a defective affidavit regardless of form or otherwise, and I so do.

25. With regard to the second ground of objection in relation to Order 31 rule 6, the court has a discretion to strike out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive. Before I proceed to examine Mr Mansaray's objection, I must point out that the court is only empowered to strike out the parts of the affidavit if it concludes that the relevant parts referred to are scandalous, irrelevant, or otherwise oppressive.

26. The relevant law now falls to be considered. The wording of Order 31 rule 6 refers to matters in an affidavit which are scandalous, irrelevant or otherwise oppressive. Upon a review of relevant authorities and giving the words their literal meaning, it appears that a scandalous matter is an allegation which may or may not be relevant, but which are so worded as to be abusive or defamatory. An irrelevant matter is an allegation which do not apply to the matter in hand and do not contribute one way or the other to a decision of such a matter. An oppressive matter is one that is unreasonably burdensome or severe on the person to whom it is directed.

The Legal position with regards to the admissibility of affidavit.

27. Order 31 rule 6 is similar to Order 41 rule 6 of the old English Rules of the Supreme Court. The use of the words "may" in Order 31 rule 6 suggests that the Court will only strike out matter that is both scandalous and irrelevant, or is otherwise oppressive, as per Lord Buckley in **Re Jessop [1910] W N 128**, a case in which the Court of Appeal refused to strike out extracts from letters marked "without prejudice".

The court is therefore not bound to strike out the matter. Such an approach was approved in the *Re J* [1960] 1 WLR 253; [1960] 1 All ER 603.

28. An affidavit must be pertinent and material. If it is not then it may be ordered to be taken off the file if a scandalous matter is inserted, or the scandalous matter may be expunged. **See *Rossage v. Rossage* [1960] 1 W.L.R. 249; [1960] 1 All E.R. 600 and *Warner v. Mosses* [1881] W.N. 69. In *Christie v Christie* (1873) L.R. 8 Ch.App. 499 at 503, Selbourne LC had this to say: "*The sole question is whether the matter alleged to be scandalous, would be admissible in evidence to show the truth of any allegation in the pleading which is material with reference to the relief prayed.*"**

29. The effect of the rule is to empower the court to strike out matters which are scandalous, irrelevant or oppressive, so that matters which are scandalous can be struck out and irrelevant matters which are not scandalous, can also be struck out, as was the case in ***Re J (An Infant)* 1960 1 All E.R. 603**. In determining whether material is scandalous, regard must be had to the previous Order 18 rule 19 of the Rules of the Supreme Court, which is of similar effect with order 31 rule 6, in which the court have determined what amounts to scandalous material for the purpose of striking out.

Scandalous Material

30. It must firstly be recognised that the courts have the power to expunge scandalous materials from affidavits. The courts have recognised that allegations of dishonesty and outrageous conduct are scandalous materials

for the purpose of Order 31 rule 6, if they are relevant to the issue to be determined. see **Rubery v Grant 1872 L.R 13 Eq. 443**. In **Millington v Loring 1881 6 Q.B.D. 190 at 196**, LJ Brett stated that "the mere fact that passages in an affidavit state a scandalous fact does not make them scandalous". If the degrading charges are made which are irrelevant, or if the charge be relevant but unnecessary details are given, the matter would then become a scandalous matter.

31. The test the court has to utilise in determining whether the matters are scandalous, is whether the matter alleged to be scandalous would be admissible in evidence, to show the truth of any allegation in the pleadings, which is material with reference to relief prayed for. This was clearly set out in **Christie v Christie 1873 L.R. 8 Ch.App.499 and 503**.

1st defendant's objections

32. It is therefore important that I set out the paragraphs in the affidavit, Mr Mansaray considers scandalous. These are paragraph **3, 11, 14, 15, 16, 32 and 47**. I have also read the entirety of the Dr Blyden's affidavit and placed it in its proper context. I shall start my consideration with paragraph 3 of the affidavit. To illustrate the key issue in relation to scandalous materials, the plaintiff in **Brooking v Maudslay 1886 55.L.T. 343**, made allegations in the statement of claim of dishonest conduct against the defendant, but sought no relief on that ground. The allegations became immaterial and were accordingly struck out.

33. In relation to the issue of matters which are irrelevant or otherwise oppressive, the court has an inherent power to strike out matters which

are deposed to in an affidavit where such matters are irrelevant to the proceedings as being irrelevant or oppressive. The court also has powers to take an affidavit down where such affidavits are of oppressive lengths. I will now go on to consider the paragraph in the affidavit complained of by Mr Mansaray.

Paragraph 3

34. This paragraph seeks to explain the reasons for seeking to be joined as a party to the action. She avers that her presence is necessary to protect the APC party from being exposed to further existential risks already posed against it by the actions of the defendants.

Paragraph 11

35. This paragraph seeks to aver that she knows as a matter of fact being a very senior stakeholder in the APC party that the 1st and 2nd defendants deliberately delayed court proceedings, even though she protested to them in several meetings both in private and behind closed doors. A similar claim is made in paragraph 12.

Paragraph 14

36. This paragraph makes references to the illegitimate and unconstitutional state of affairs within the APC party, which she attributes to the actions of the 1st and 2nd defendants.

Paragraph 15

37. This paragraph makes references to her belief that the 1st defendant is using the 3rd defendant as a shield from possible criminal prosecution for acts of a criminal nature detailed in the commission of enquiry reports.

Paragraph 16

38. This paragraph makes references to her belief that there are numerous alleged criminal activities of the 1st defendant that the Anti-Corruption Commission is investigating.

Paragraph 32

39. This paragraph makes references to the enactment of a fully democratic constitution on the 5th October 1991 that fully removed vestiges of certain committees that seemingly had the powers to override popular choices of party members as to who represented them in parliament.

Paragraph 47

40. This paragraph makes reference to the decision of the Supreme Court case SC3/2002 and the effect of the said case on the 1st defendant.

41. Having reviewed the said paragraphs relied upon as scandalous matters, I consider that in the context of Dr Blyden's case, these matters cannot be said to be scandalous for a number of reasons:

1. Firstly, the plaintiff's pleaded case is about democratisation and illegality in the APC party. The plaintiff came to court on the premise that those holding office as executive members of the party were doing so illegally.
2. In my ruling of 19th April 2021, I was very clear at paragraph 58 of that ruling that the central claim brought to court by the plaintiff had been acknowledged by the defendants and as a consequence of that recognition, they had indicated a willingness to abide by democratic principles by seeking a variation of the injunction to

enable them to go to a national delegates conference in order to adopt a new democratic constitution.

3. The matters raised in the affidavit of Dr Blyden cannot be described as scandalous within the meaning of Order 31 rule 6. The matters impugned by Mr Mansaray, are not sufficiently strong enough to be characterised as scandalous in a manner envisaged by the rules. The majority of these matters are already in the public domain, and where criminal matters are concerned, any allegations cannot be described as scandalous particularly so as they are being investigated and the 1st defendant has not been charged with any offence. Some of the matters referred to by Dr Blyden she claims are within her personal knowledge. If the defendant's have an issue with the veracity of the claims, they are at liberty to seek to cross examine her on the affidavit. Simply asserting that they are scandalous comments is plainly insufficient.
4. As I have pointed out, having read Dr Blyden's affidavit, the issues she raised are relevant to the matters before the court. The notice of motion seeks reliefs that are geared towards good governance and democratic values in the APC party. Paragraph 4 is an example of a relief sought in aid of democracy and good governance. The rest of the reliefs sought are with respect to the illegitimacy of those holding office in the current executive of the party.
5. In aid of those prayers, the affidavit seeks to provide detailed information regarding the lack of democracy within the APC party.

These matters averred to in the affidavit cannot be said to be irrelevant to the proceedings or otherwise oppressive.

6. The length of the affidavit can arguably be said to be oppressive, but that has to be balanced against the detailed nature of the information provided, which Dr Blyden believes will aid her case, in a bid to show as full a picture as she can to enable the court to reach the correct decision. It should be noted that save for the allegations of illegality in the APC party of those holding executive offices in the party when their term of office have allegedly expired, the plaintiff's case discloses scanty information about the internal democratisation process, within the APC party, in the manner described by Dr Blyden.

42. I am therefore unable to hold that the matters relied upon by Mr Mansaray for the 1st defendant should be struck out of the affidavit, on account of their being scandalous, irrelevant or otherwise oppressive. The objection by the 1st defendant is therefore overruled.

2nd defendant's objections.

43. The objection relied upon by the 2nd defendant is in similar terms to that of the 1st defendant. Whilst the application may not be in the appropriate form as provided for in Order 8 rule 4 of the Rules, Order 2 rule 1 sub rule requires that non-compliance shall not nullify the proceedings, however the court has the powers to order amendments where necessary. I do not accept that Dr Blyden's application has changed the plaintiff's case in any material manner. Dr Blyden's motion is clear on the face of it that she seeks to be added as a party to the existing claim. In any event,

in this instance case and for the reasons given, the objections of the 2nd defendant are therefore overruled.

3rd Defendant's objections.

44. The 3rd defendant's objections are similar in nature to the other objections raised by other defendants. There are irregularities as pointed out by Mr Macauley for the 3rd defendant, but having regard to my earlier comments, these irregularities are not fatal to the claim and they will be overruled accordingly.

45. The objections with respect to form and the order 31 objections are hereby overruled. I will now proceed to consider the application for joinder.

The application for joinder by interested parties.

46. Dr Blyden by way of a notice of motion has sought an order for her to be added as a plaintiff in the existing action before me pursuant to the provisions of Order 18 rule 2(b) and rule 6 (3) of the High Court Rules 2007. The application is supported by a lengthy affidavit, sworn to on the 13th day of October 2021. It is important that I set out the provisions of Order 18 rule 6 (2)(b) of the 2007 Rules, which provides:

"(2) Subject to this rule, at any stage of the proceedings in any cause or matter the Court may, on such terms as it thinks just and either of its own motion or on application -

(b) order any of the following persons to be added as a party:-

- (i) *any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or*
- (ii) *(ii) any person between whom and any party to the cause or matter where there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.*

The relevant legal provisions

47. The purpose of the said rule is to allow for the joinder of parties to litigation primarily where it is in the interest of justice to do so. In simple terms and upon a literal reading of the said rules, the purport and tenet of the rule is to ensure the following:

1. That any person who ought to have been joined as a party; or
2. Whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or
3. Any person between whom and any party to the cause or matter where there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the court it would be just and convenient to determine as between him and that party as well as between parties to the cause or matter.

48. Consideration must also be given to statute law. The Common law Procedure Act 1852 by virtue of section 74 of the Courts Act 1965. Section 34 of the said Act provides as follows:

"34 It shall and may be lawful for the Court or a Judge, at any Time before the Trial of any Cause, to order that any Person or Persons, not joined as Plaintiff or Plaintiffs in such Cause, shall be so joined; or that any Person or Persons, originally joined as Plaintiff or Plaintiffs, shall be struck out from such Cause, if it shall appear to such Court or Judge that Injustice will not be done by such Amendment, and that the Person or Persons, to be added as aforesaid, consent, either in Person or by Writing, under his, her, or their Hands, to be so joined, or that the Person or Persons, to be struck out as aforesaid, were originally introduced without his, her, or their Consent, or that such Person or Persons consent in Manner aforesaid to be so struck out; and such Amendment shall be made upon such Terms as to the Amendment of the Pleadings (if any), Postponement of the Trial, and otherwise, as the Court or Judge by whom such Amendment is made shall think proper; and when any such Amendment shall have been made, the Liability of any Person or Persons, who shall have been added as Co-plaintiff or Co-plaintiffs, shall, subject to any Terms imposed as aforesaid, be the same as if such Person or Persons had been originally joined in such Cause."

49. This provision gives effect to the provisions of Order 18 rule 6 of the High Court Rules 2007. However, the modern trend in such applications which has been developed by the courts is to grant such applications only where it is necessary to enable the question at issue to be determined.

The presence of the interested party who seeks to be added as a plaintiff must be necessary having regard to the issue to be determined. (**see Long v Crossley 1879 13 Ch D.**) That is the sole question for the court at the stage of the application. The question of whether the new plaintiff has a cause of action will not be considered on the application to add him to the action, as the sole purpose at that stage is the consideration of whether the new plaintiff has a case that can properly be adjudicated upon.

50. In matters such as this, where the issues are of general interest to members of the APC party, the court must give consideration to whether the plaintiff sufficiently represents all parties in the same interest. Where the court reaches such a conclusion, another party will not be added. (**See De Hart v Stevenson 1876 1 Q.B.D. 313**).

51. Dr Blyden has simply relied upon both limbs of Order 18 rule 6 sub rule 2(b). It therefore behoves the court to consider under which of the two limbs of subrule 2 (b) provides her with a vehicle through which she can be added as an interested party. In order to accomplish this task, I have decided to stand back and take a wholistic look at Dr Blyden's case and to carry out a comparison with the plaintiff's case.

52. Having conducted a thorough analysis of both cases, there seems to be little difference in substance between the case presented by the plaintiff and that presented by Dr Blyden. They both raise issues of illegality and undemocratic practices within the APC party, of which both of them are members. Whilst the plaintiff, simply challenges the legal status of some executive members of the party, Dr Blyden challenges the

same legal status of executive members but provides an in-depth analysis of the said undemocratic practices within the party. These challenges and reliefs sought are more fully set out in the prayers at paragraph 4,5,6,7,8, 10,12,13,14,15,16,18,19,20,21,22 and 23.

53.It is noteworthy to mention that paragraphs 4,5,8,9,10,11, border on contempt of the orders of this court, dated 19th April 2021 for which there is already a pending application for contempt of court against the 2nd defendant and the other defendants. It is also noteworthy to mention that paragraphs 13,14,15,16,17,18,19,20, 21 and 22 are already pending before this court for adjudication. Consequently, the central issue of the illegality of the executive of the party is not a new issue as that is the key issue to be determined by the court shortly. In simple terms, all of these issues have been acknowledged by the defendants who have attributed this state of affairs tacitly on the 1995 Constitution. In recognition and admission of these undemocratic nature of the said 1995 constitution the defendants sought to vary the injunction to enable them to adopt a new constitution, which they considered would conform to democratic values.

54.Dr Blyden now seeks by paragraphs 6 and 7 of the reliefs sought for the defendants to produce what she refers to as a legitimate constitution of 5th October 1991. I raised this issue with Dr Blyden during the course of arguments and pointed out to her that the issue of a 1991 Constitution of the APC party had never been litigated in any of the courts in Sierra Leone, from the Supreme Court downwards. All the relevant authorities show that the only constitution that has been involved in litigation over

the years has been the 1995 constitution. The difficulty she has with that approach, is the fact that she has adduced no evidence to show that the 5th October 1991 Constitution she refers to was ever formally adopted in accordance with any party constitution or relevant law, in force at the material time.

55. In the light of those facts, this court cannot grant an order requiring the defendants to produce a 1991 constitution, which has never been litigated in any court, particularly so as this court has ordered the defendants to adopt a new constitution at a court ordered emergency national delegates conference. Had Dr Blyden applied to this court prior to the orders of this court on the 19th April 2021, for the order she now seeks, this court would have been inclined to grant such an order. It is now too late in the day to seek such an order. Similarly, with respect to the order she seeks at paragraph 23, this order sought may well have been granted at an earlier point in time.

56. Having taken a wholistic look at the application by Dr Blyden and the relevant legal tests, I conclude that in the light of the similarities between the case for the plaintiff and that of Dr Blyden, similar issues have been raised by both applications. The overarching issue in both cases is the undemocratic nature of the rules governing the APC party, which has been recognised by the defendants in their application to adopt a new constitution. If there are flaws in the process leading up to the adoption of the constitution as claimed by Dr Blyden, the appropriate manner is to deal with such breaches by way of a contempt of court application, which is already before the court. That said the application by Dr Blyden raises

serious issues that ought to be carefully and fully considered by the party leadership internally, if further litigation is to be avoided in the future.

57. In the circumstances, I am satisfied that on the available evidence before me and having regard to the issues raised by Dr Blyden in her application, her presence is not necessary in this litigation for the purpose of determining the issues in this case. Her presence would merely lengthen the proceedings and would have the effect of relitigating issues which have already been recognised by the defendants. Steps have been taken to regularise the position by the adoption of a new democratic constitution. As Dr Blyden herself recognised, she has a desire to have these matters resolved as quickly as possible, in the interest of democracy. All parties are equally of the same view that these matters need to be resolved very quickly. Adding Dr Blyden as a party to these proceedings would be inimical to the speedy progress required and expressed by all parties in submissions.

58. The application by Dr Blyden to be added as a party is therefore refused.

The Hon Mr Justice A Fisher J