C.C 3/20 2020 M. NO. 2

IN THE HIGH COURT OF SIERRA LEONE
(GENERAL CIVIL DIVISION)

BETWEEN:
MORIE MOMOH & 14 OTHERS - 1ST PLAINTIFF
(NO: 9)- kOIDU
MARGINALISED AFFECTED PROPERTY OWNERS - 2ND PLAINTIFF
(LG)
9 GBENSE NGUMBU STREET
TANKORO
KOIDU CITY

AND
OCTEA LTD -1ST DEFENDANT
THE MANAGING DIRECTOR OCTEA LIMITED -2ND DEFENDANT
OCTEA DIAMOND LTD -3RD DEFENDANT
THE MANAGING DIRECTOR OCTEA DIAMOND LIMITED -4TH DEFENDANT
OCTEA MINING LIMITED -5TH DEFENDANT
THE MANAGING DIRECTOR OCTEA MINING LIMITED -6TH DEFENDANT
OCTEA SERVICES LIMITED -7TH DEFENDANT
THE MANAGING DIRECTOR OCTEA SERVICES LIMITED -8TH DEFENDANT
OCTEA FOUNDATION LIMITED -9TH DEFENDANT
THE MANAGING DIRECTOR OCTEA FOUNDATION LTD -10TH DEFENDANT
KOIDU LIMITED -11TH DEFENDANT
THE MANAGING DIRECTOR KOIDU LIMITED -12TH DEFENDANT
ALL OF 84 WILKINSON ROAD
FREETOWN

BEFORE HON. MR. JUSTICE A.K MUSA (J.)
DATED THE 3RD DAY OF SEPTEMBER 2020
COUNSEL
C.M. B JALLOH Esq with him D. FOFANAH and A. FORNA for the Plaintiffs
And D.E TAYLOR Esq for the Defendants

BACKGROUND

1. Following the filing of exparte Notice of motion dated 17th day of August 2020 by the plaintiffs/Respondent in which certain orders were granted by Honourable Mr. Justice Samuel O. Taylor (J) on the 19th August 2020 whereby the representation of solicitor for the Defendants/Applicants was noted, solicitor for the Defendants/Applicants subsequently raised a

viva voce preliminary objection to the granting of the order supra. However by direction of the court that a notice of motion be filed to address the preliminary objections same was filed dated 20th August 2020 together with affidavit in support sworn to on even dates by Drucil Evelyn Taylor seeking inter alia to set aside the order of the 19th August supra and the action herein. Following the filing of the notice of motion dated the 20th August supra, counsel for the plaintiffs/Respondents raised a preliminary objection to same which was however overruled. Hence, the motion dated 20th August supra was heard which is now the subject for determination before the court.

2. The plaintiffs/Respondents on their part being opposed to the said application filed an affidavit in opposition sworn to on the 27th August 2020 by Alpha O. Kamara to which are attached several exhibits. At this stage however, I will consider the crux of the arguments of the Defendants/Applicants which is more or less a preliminary objection to the exparte notice of motion supra and the order obtained therefrom and following that will consider the arguments and submissions of the plaintiffs/Respondents in response to the notice of motion.

THE ARGUMENTS AND/OR SUBMISSIONS BY COUNSEL FOR THE DEFENDANTS/APPLICANTS UNDER PRELIMINARY OBJECTION

3. Counsel for the Defendants/Applicants predicated the substance of his arguments which are continuation of his preliminary objection under two fold to wit: firstly, absence and/or lack of jurisdiction to hear and determine exparte notice of motion and secondly absence of full and frank disclosure to the court. It must be noted that for better edification of the issues I will set out seriatim the arguments for each of the grounds supra.

4. Firstly, on the jurisdictional ground, counsel argued that exhibit "JF2" in the exparte notice of motion which is a copy of writ of summons in this action dated 5th February 2020, that there is no writ of summons properly before the High court of Sierra Leone in that same has not been filed under any of the established civil Registries to wit: the Registry in Freetown or any of the other three District Registries in the provinces. He gained comfort in his submission by relying on order 6 rule 7 (1) and order 1 of the High court Rules 2007. He submitted by illustrating that proper filing must be done in any of the Registries and that a litigant could not be said to have issued a writ of summons in the Freetown Registry if he files at the waterloo Registry since there is no such

registry established by law. Similarly, a litigant cannot be said to have issued a writ of summons in the Eastern Province if he files in the Kono District Registry but rather one must file in the Kenema District Registry as it is the only District Registry established in the Eastern Province. He furthered that there had not been any repeal and/or amendment to the High court Rules 2007 creating a new District Registry in Kono in addition to that in Kenema as another District Registry in the Eastern province. Thus, he submitted that in view of the foregoing, there are no triable issues raised ab initio in the matter herein emanating from a Registry that is non-existence.

5. Still on the issue of jurisdiction counsel submitted that the writ of summons herein was not sealed by the Master or District Registrar as established by law. He furthered that the provisions supra cannot be alternated but must be conjointly adhered to as it goes to the very root of the matter which is mandatory and not directory thus refencing the Supreme court case of **DANIEL SANKOH vs. AHMED TEJAN KABBAH MISC APP NO.1/2002 dated 24th April 2002**

6. On the second ground of argument dealing with the absence of full and frank disclosure, counsel premised his arguments on exhibit"DET1" which is a copy of an earlier writ of summons dated 1st April 2019 filed in the District Registry in Kenema in which the 2nd plaintiff in the action herein is the same 2nd plaintiff therein and all the Defendants herein are the same Defendants therein. He further referenced the court to exhibit "DET2 which is a copy of application by way of notice of motion dated 6th May 2019 raising jurisdictional objections to the earlier writ of summons in exhibit "DET1" and the ruling to "DET2" been exhibit "DET3" dated 13th march 2019 by Honourable Mr. Justice Ansumana Ivan Sesay (J) as he then was. Counsel submitted that exhibit "DET3" precipitated the application herein by exparte notice of motion and relied on the entire contents of the said affidavit. He further submitted that the first order prayed for in the motion dated 20th August 2020 begs the question to wit: what material particular has the Applicant therein failed to disclose in his application for an exparte order? Counsel submitted that in answer to the said question recourse must be made to both actions.

7. Counsel further submitted that the other thing which counsel for the plaintiffs/Respondents failed to disclose under the exparte notice of motion application is that which will be brought to the fore when exhibit "JAF1" is examined properly. He pointed out that exhibit "JAF1" contains

certificate of incorporation of the 11th Defendant herein, that however same does not contain the shareholding of the company. He furthered that the importance of his argument will be gleaned from the second relief prayed for in the exparte notice of motion which he submits covers all the Defendants. He further argued that the importance of the foregoing is that nothing could be taking before the court that creates a nexus between the said document as exhibited thereto and the prayers sought which is to affect the Defendants herein.

8. Still on full and frank disclosure, counsel submitted that when an individual comes before the court exparte he must provide the court with every material particular for interim orders, he however submitted that in the instant application the Applicants have failed to disclose such material particular by reason of the fact that same failed to disclose to the court the existence of exhibit "DET1" the earlier writ of summons dated 1st April 2019 supra for which 2nd plaintiff in the matter herein and all the Defendants herein are all parties therein.

9. Counsel further submitted that by juxtaposing "DET1" and "JAF2" in the affidavit in support of the application exparte it will become apparent to the court that the pleadings to wit: the statement of claim contains the same cause of action in either exhibits which he pointed out is what is important under his objection. That by perusing both exhibits on a step by step basis it is apparent that the pleadings are verbatim from the start to finish. On the foregoing, counsel submitted that the Applicants ought to have made a disclosure of the existence of the said matter particularly when counsel for the Applicant is seised of the earlier matter for which the said 2nd plaintiff is represented by the same counsel.

10. Counsel still on the issue of full and frank disclosure made submissions with respect to exhibit "JAF 6&7" in the exparte application. He argued that the said exhibits are orders granted in proceedings in the United Kingdom which bears the name of a certain Benjamin Steanmetz in his individual capacity and same not been a party to the action. He submitted on this point that counsel for the Applicants have failed to disclose to the court the Application leading to those orders.

11. Counsel in conclusion to his preliminary objection craved the indulgence of the court to vacate the interim order granted exparte and to strike out the action herein.

REPLY TO PRELIMINARY OBJECTION BY COUNSEL FOR THE PLAINTIFFS/RESPONDENTS

12. In reply to the preliminary objection by counsel for the Defendants/Applicants, counsel for the plaintiffs/Respondents C.M.B Jalloh relied on his affidavit in opposition to the motion herein and relied on the entirety of same sworn to on the 27th August 2020 supra and with particular reference to paragraphs 4,5&6 and specific reference to paragraph 5.

13. Firstly, on the issue of full and frank disclosure, counsel submitted in reply that paragraph 5 addresses exhibit "DET2" which counsel for the Defendants had alleged concerns another matter. He distinguished that no freezing order is filed in Kenema. Further that the matter in Kenema is in respect of a certain Aiah Fengai and not the current matter touching and concerning Morie Momoh & others. That the parties in the two matters are different

14. He submitted further that the 2nd plaintiff/Respondents herein been a marginalized affected property owner is a company limited by guarantee that support marginalized affected owners

15. Counsel further submitted that the issues may be the same in that they are both class actions however, individual plaintiffs have the right to bring class actions in their different classes to seek relief before the court and that could not amount to an abuse of the process.

16. Counsel further submitted that they are opposed to paragraph 7 of the Defendants'/Applicants' affidavit in support and that no freezing order were filed in any of the Registries in the High court of Sierra Leone. He pointed out that exhibit "DET3" is misleading and urged the court to carefully peruse paragraph 12 of the affidavit in opposition.

17. Counsel further submitted that counsel for the Defendants/Applicants has submitted that there is no nexus between the Defendants/Applicants

and BSGR and his reference to exhibit "JAF1" in the Freezing application being the substantive application. He submitted that to the contrary there is overwhelming and copious evidence of nexus between the Defendants/Applicants in the matter herein and their parent company "BSGR" and same holds a high risk that the assets of the Defendants/Applicants could easily dissipate. On the forgoing counsel referred the court to paragraph 9 and 10 of the affidavit in opposition and in particular exhibit "AOK1, 2,3,4,5 & 7 respectively which he submitted are exhibits contained in the substantive application.

8. Still on the issue of full and frank disclosure, counsel submitted that counsel for the Defendants/Applicants has submitted that there is a freezing order hidden somewhere which was not disclosed. Counsel then referred the court to paragraph 7 of the affidavit in support of application. In response to the foregoing he submitted that indeed a freezing order application was filed in Kono however, same was for a different matter, with different plaintiffs against the same Defendants herein. Further, that the said application has not yet been determined to date. Thus, he submitted that same has no bearing to the present matter and that counsel's argument on full and frank disclosure does not arise.

19. Counsel further submitted that exhibit "DET3" filed by the other side is misleading in that same has nothing to do with freezing order but relates only to service. He further argued that there is no disclosure by counsel for the Defendants/Applicants of the application leading to the said exhibit "DET3". He then referred the court to carefully peruse paragraph 13 of the affidavit in opposition and exhibit "AOK13" in tandem with exhibit "DET3".

20. Counsel further submitted that he opposes paragraph 9 of the affidavit in support and further submitted that the proceedings are now inter-partes upon the intervention by counsel for the Defendants by an order exhibited "AOK14". He submitted that in inter partes application the issue of full and frank disclosure does not arise and that the order dated 19th August 2020 being exhibited as "AOK14" supra is an inter partes interim order by order 2 of same.

21. Counsel finally concluded on the issue of full and frank disclosure by submitting that there is full and frank disclosure of all material facts

before the court and that the Defendants/Applicants have failed woefully to present evidence of any on disclosure of material facts.

22. On the issue of absence and/or lack of jurisdiction raised, counsel for the plaintiffs/Respondents in reply submitted that he is opposed to the submission by counsel for the Defendants/Applicants that the Kono District High court Registry was not the proper forum to have issued the writ of summons herein. He furthered that counsel for the Defendants/Applicants has raised similar objections herein before the Judge in Kono and same was overruled. On the above submission counsel referred the court to exhibit "AOK8,9,10 and 11. respectively.

23. Still, on the issue of jurisdiction, counsel submitted that counsel for the Defendants/Applicants in another matter had issued proceedings in the Kono District High court Registry and had obtained judgment which was enforced. He submitted that in view of the foregoing same must be estopped from making such submissions.

24. Counsel further submitted that counsel for the Defendants/Applicants in his arguments had relied on the High court Rules 2007 being the relevant rules. Counsel on the issue of District Registry submitted that it is vivid that the High court Registry also means District Registry albeit under order 1 rule 2 District Registry is limited to Makeni, Bo and Kenema. He however argued that the door is not closed for another District Registry. Hence the District Registry in Kono is established. He craved the indulgence of the court to overrule the said objection as same is Res judicata.

RESPONSE TO REPLY BY COUNSEL FOR THE DEFENDANTS/APPLICANTS

25. In response to the reply by counsel for the plaintiff/Respondents, counsel for the Defendants/Applicants on the principle of full and frank disclosure relied on the case of EXPARTE MUCTARR OLA TAJU DEEN vs. COMMISSIONER OF ANTI- CORRUPTION and OTHERS MIS APP NO. 6 of 2000 and made reference to the dictum of Justice D.E.F Luke (CJ).

26. He submitted that exhibit "AOK13" filed in the affidavit in opposition wa not filed in the Exparte Notice of motion application for which a preliminary objection has now been raised.

27. Counsel further submitted on exhibit "DET3" that the submission made by counsel for the plaintiffs/Respondents in respect of the said exhibit is misleading. He pointed out the exhibit "DET3" is a court order that references an application made exparte dated 4th March 2019 and that i fact the said order was not exhibited in the substantive application whic he submitted ought to have been disclosed

28. On the submission by counsel for the plaintiffs/Respondents that the Defendants/Applicants have benefited from initiating proceedings in Kono District Registry of the High court counsel submitted that such submissions are unfounded.

29. He concluded reiterating that the court vacates the interim order obtained exparte and/ or strike out the action herein.

ISSUES AND FINDINGS

30. It is not in contention before the court that the application herein has been necessitated by reason of an exparte notice of motion filed and subsequent orders granted therefrom for which counsel for the Defendants/Applicants being dissatisfied raised certain preliminary objections by way of notice of motion.

31. I must state that what is in contention before me now is twofold to wit: Firstly, whether this court has jurisdiction to hear and determine the substantive application and by extension the matter herein when the action herein was issued in the Kono District Registry and secondly whether there has been a full and frank disclosure by the plaintiffs/Respondents in approaching the court exparte.

32. I must state that a determination of the first issue in contention automatically determines all other issues as the effect of matters of jurisdiction are detrimental, disastrous, devasting and without leverage

for salvaging the situation regardless of desirability of such a cause of action. See the case of CROSS RIVER UNIVERSITY OF TECHNOLOGY (CRUTECH vs. MR. LAWRENCE O. OBETEN Court of appeal of Nigeria CA/C/24/2010 dated the 6th day of April 2010. It must be noted that in the event the court holds that the court lacks the jurisdiction, the matter is at an end and all other matters raised therefrom are of no moment to the court except that the other issues emanating therefrom will be considered only for purposes of developing the jurisprudence.

3. At this stage, I will elucidate on the first issue for determination and irrespective of what my conclusions will be on it, I will still proceed to consider the second issue for determination.

4. In considering the first issue for determination, recourse will be made to the relevant provisions of law governing the establishment of civil Registries in the High court and any other law.

5. At this stage the questions for determination under the first issue for determination are to wit: What is the law governing the establishment of civil Registries in the High court within our jurisdiction; has there been a repeal and/or an amendment to the said law; is there any other law relating to the establishment of civil Registries in the High court of Sierra Leone and lastly, has the present action herein been issued under any of the established civil Registries under the High court? I must state unequivocally that answers to the above questions effectively settles the first issue for determination. At this juncture I will now answer the questions posed.

36. On the first question, to wit: What is the law governing the establishment of civil Registries in the High court within our jurisdiction? I will refer to order 6 Rule 7(1) of the High court Rules supra. For ease of reference, the same reads vide: "Every writ of summons shall be issued out of the Master's Office or a District Registry and shall be signed and sealed by the Master or District Registrar and shall thereupon be deemed to be issued". Since the aforesaid provision does not define what these District Registries are, recourse must be made to the interpretation order to wit: order 1 Rule 2.

37. Order 1 Rule 2 of the High Court Rules supra reads Vide: 'District Registry' means " **the District Registry in Makeni, Bo or Kenema**".

38. Thus, by these provisions which are unambiguous a litigant seeking to issue a writ of summons must do so in any of the said Registries established by constitutional Instrument No. 8 of 2007. Hence, same is the governing law in Sierra Leone.

39. On the second question to wit: whether there has been a repeal and/or amendment to the said law? I must state from all the findings and/or research done so far it is not to my notice that there has been a repeal and/or amendment to the said constitutional instrument. Hence, in the absence of such repeal or amendment constitutional instrument No.8 is the applicable law and its validity could not be questioned at all.

40. On the third question to wit: is there any other law relating to the establishment of civil Registries in the High court of Sierra Leone? I must state that over the course of time there has been an advancement in our laws in that by statutory Instrument No. 21 of 2019 there has been an amendment to the Criminal Procedure Act No.32 of 1965 in that the Honourable Chief Justice pursuant to paragraph 2 of Rule 2 of the High court (criminal session Rules 1965 did appoint for the Holding of criminal session in Kono. The said statutory Instrument read thus, vide: " **In exercise of the powers conferred upon me by paragraph 2 of the High court (criminal sessions) Rules 1965, I as Chief Justice of the Republic of Sierra Leone do hereby make the following orders: (1) That the High Court shall hold criminal sessions in Kono on the last Monday in January, the third Monday in May, the third Tuesday in September and the last Monday in November in the year 2020**".

41. Hence, from paragraph (1) it is clear that it is only in respect of criminal sessions that the Honourable Chief Justice has appointed Kono for the holding of sessions which is separate and distinct from the establishment of a civil District Registry in Kono.

42. On the last question to wit: has the present action herein been issued under any of the established civil Registries under the High court? It must be noted that in answer to the above recourse should be made to exhibit "JAF2" which is the writ of summons in this action, exhibit "DET which is writ of summons dated 1st April 2019 and paragraph 5 of affidavit in support of Exparte notice of motion dated the 17th August 2020. Firstly, juxtaposing the two exhibits hitherto it is vivid that the latter exhibit "DET1" was duly issued signed and sealed in the High court civil District Registry in Kenema as it could be glean from the face of same. However, by perusing exhibit "JAF2" it is vivid that the same is not issued, signed, and sealed in any of the Registries hitherto to wit: Freetown, Makeni, Bo or Kenema. There is no indorsement on the face of the said writ that same has been issued in any of the Registries. Hence in the absence of same having any indorsement as to what Registry it was issued it however, becomes very much clear in paragraph 5 supra where it is deposed to by the plaintiffs' that same was instituted in Kono and coupled up with the arguments by counsel for the plaintiffs/Respondents that counsel for the Defendants/Applicants has benefited from initiating proceedings in the Kono District Registry and obtained judgment therefrom in the past so why raise the issue at this stage hence, counsel must be estopped from putting forward such arguments and further the argument acknowledging only three District Registries but however, submitting that the door is not close for another Registry to be opened without alluding to any law establishing such a Registry in Kono, I must state that the present writ instituting this action was filed in Kono and not issued in any of the established Registries supra.

43. Counsel for the plaintiffs/Respondents had argued that the jurisdictional issue raised herein is res judicata as it has been determined by the Judge in Kono. However, I must state that such is not the case in that in the matter Fengai & 73 others vs. Octea Limited & others being exhibited as exhibit "AOK12 in the affidavit in opposition and the current action, there is a marked distinction between the two whereas in that the order granted by the Learned Judge made it explicitly clear that filing could be done in the Kono District court Registry when a matter is pending in the Kenema District Registry. However, although I still stand by my earlier position that there is no District Registry in Kono, the difference in that Ruling and the present action is that of issuing a writ. There is no indication in that ruling that one can issue a writ in Kono, but the ruling is

limited to filing. Thus, by reason of the distinction the issue before the court is not Res judicata.

44. Hence, in view of the foregoing analysis I hold that on the first question for determination that the present action was filed in Kono and further since there is no District Registry in Kono it could not be said that a writ could be issued from its Registry. I further agree with counsel for the Defendants/Applicants that the said writ has not been signed and sealed by any of the Registrars in the District Registries. Hence, I agree with counsel for the Defendants/Applicants and gaining fortitude in the case of CROSS RIVER UNIVERSITY OF TECHNOLOGY (CRUTECH vs. MR. LAWRENCE O. OBETEN supra that the court lacks the Jurisdiction to hear and determine the matter herein.

45. On the second issue for determination to wit: whether there has been full and frank disclosure by the plaintiffs in approaching the court exparte, I must state that in a bid to elucidate on this issue succinctly, it is but foremost to state the law as espoused in the locus classicus case within our jurisdiction and the law generally which will clearly shed light on the road map in determining the issue at hand.

46. In the locus classicus case of EXPARTE MUCTARU OLA TAJU DEEN VS. THE COMMISSIONER OF THE ANTI CORRUPTION COMMISSION and others supra which counsel for the Defendants/Applicants has relied on, it was held by the supreme court vide: " **the law is clear on the point that there ought to be a full and frank disclosure of all material facts when an exparte application is made for an order of certiorari to issue. I venture to go further that this must be so in all exparte application**". See (page 7 thereof)

47. Further, at 8 page of the above case supra, the learned chief Justice made a clear explanation of what the principle of full and frank disclosure is and this is what he had to say : "**In my view non-disclosure of material facts can amount to misstatement of facts. In the Dreyfus case supra, the Judge Kay J. observed inter alia, " That the full judgment of Bacon C.J was not deposed in the affidavit in a subsequent action before the vice chancellor for leave to serve the writ out of the jurisdiction, Kay J. in his judgment had this to say:**

"The affidavit as it stands is a direct misrepresentation of the effect of the judgment of the vice chancellor, so far the case is quite plan. I have always maintained, and I think its most important to maintain most strictly, the rule that in exparte application to this court, the utmost good faith must be observed. It is therefore an important misstatement speaking for myself, I have never hesitated, and never shall hesitate, until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this court the importance of dealing in good faith with the court when exparte applications are made".

8. At this juncture, having set out the law on the principle of full and frank disclosure, I will at this stage consider key questions warranting the applicability of this principle. Firstly, is the application leading to the present one exparte? Secondly, if the answer to the first question is in the affirmative, are the two matters to wit exhibit "DET1" in the application herein and exhibit "JAF2" in the substantive application the same warranting a disclosure of material facts in the application exparte? I must that answers to these two questions determine the second issue for determination.

9. On the first question, whether the application leading to the present one and/or which necessitated the present one an exparte application? I must state that in a bid to answer the above I will refer to the application necessitating the present one which is intituled "Exparte notice of motion" dated the 17th day of August 2020. It is clear from the face of the said application that it is an exparte application and the order granted therefrom on the 19th August 2020, was an exparte order. I must state that in as much as it is indorsed on the face of the order the the representation of the other side to wit : D.E Taylor is noted, it is clear from the records that counsel for the other side D.E Taylor was not heard in which case the application would have automatically been converted to an inter partes application. However, the order was granted solely upon hearing counsel for the plaintiffs/Respondents C.M.B. Jalloh. On this point, it is the position of the law as in the book interlocutory Applications trial and appellate practice second edition by Ugochukwu Mike Mgbeahuru 2014 see page (6), that " in an exparte application, no other party to the suit even though present in court is entitled to be heard except the party who is moving the motion". Thus, in view of the

foregoing, I am of the considered view that the application leading to
application and the order obtained therefrom was obtained exparte.

50. Now, having answered the first question in the affirmative paving way f
the second question which I consider very much germane to the issue of
full and frank disclosure to wit: whether the two actions are the same
requiring a disclosure of material facts in the exparte application? I
must reiterate as I have done at the onset that the application which is
under the microscope is that dated the 17th August 2020 supra. Firstly, i
answering the foregoing, I will allude to only two key exhibits which I
consider very germane to wit: exhibit "JAF2" being writ of summons
dated 5th February 2020 and exhibit "DET1" being writ of summons dated
1st April 2019. Juxtaposing the two one will realize that the former on the
parties has an indorsement as to plaintiffs a certain Morie Momoh & 14
others as 1st plaintiffs and as 2nd plaintiffs "marginalized affected
property owners on the one hand and the Defendants being Octea Limited
and 11 others on the other. I note on the other hand, the latter exhibit
being "DET1" has as indorsement the parties the 1st plaintiff a certain
Aiah Fengai and 73 others and the 2nd plaintiff being marginalized
affected property owners on the one hand. On the area of the
Defendants, there is Octea Ltd being the 1st Defendant and 11 others.

51. Hence, in as much as the two actions are very similar in terms of parties,
however, the parties are not the same as the 1st plaintiff in either action
are completely different albeit the same 2nd plaintiff and the Defendants
in either action. There plaintiffs/Respondents had argued that the 2nd
Defendant in either action is a company limited by guarantee aimed at
promoting the interest of marginalized affected property owners in other
words a nominal party being a corporation sole who could not be
considered stricto senso an individual seeking the enforcement of his
right in court. Thus, the cumulative effect is that the two actions are
different by reason of the fact that individual plaintiffs been the 1st
plaintiff in either action have the right to institute class actions which is
typical and/or characterize the two as argued by counsel for the
plaintiffs/Respondents a submission I agree with entirely.

2. On the issue of the same causes of actions as contained in the statement
of claim and the particulars of claim in either action as argued by counsel
for the Defendants/Applicants, I must state that by perusing both

exhibit "JAF2" and "DET1" I agree with counsel for the Defendants/Applicants that the claims in both actions are ipsisima verba which I consider absurd to say the least. However, the fact that the claims are the same in both actions does not make both actions the same as the peculiar difference between the two actions lie in the 1st plaintiff in either action who are not the same.

53. Thus, in view of the illation reached on the above issue that the parties are different it will at this stage be difficult to go further into the issue of whether there has been disclosure of material facts as an attempt in doing will amount to an exercise in futility both actions been different entirely. Hence, juxtaposing the various exhibits in the application herein and the affidavit in opposition it is of no moment as I agree with counsel for the plaintiffs/Respondents that the two actions are different albeit the similarities, thus the issue of disclosure of material facts do not arise.

CONCLUSION

54. In conclusion, by reason of the conclusions reached under issues and findings, I hold that the Defendants/Applicants have successfully argued ground one of his preliminary objection to wit: the ground on lack of jurisdiction of the court to hear and determine the action herein but same have been unable to successfully argue the second ground of the objection raised to wit: absence of full and frank disclosure. Thus, in view of the foregoing I hereby grant the application herein which is more a preliminary objection on ground one (1) and make the following orders:

1. That the action herein being writ of summons dated 5th February 2020 is wholly struck out.
2. That both parties bear their respective costs.

Signed.....
Hon. Mr. Justice Augustine K. Musa (J)