



IN THE HIGH COURT OF NDIAN JUDICIAL DIVISION

HOLDEN AT MUNDEMBA

BEFORE HIS LORDSHIP JUSTICE FORBANG LESLIE FORMIN --- PRESIDENT

WITH MR. SIMON EKUMENE MBANDA AS THE REGISTRAR-IN-ATTENDANCE

THIS WEDNESDAY THE 27TH DAY OF APRIL 2012

SUIT NO:HCN/003/OS/2011/4M/2012

BETWEEN:

S.G. SUSTAINABLE OIL CAMEROON LTD.APPLICANTS

AND

**THE STRUGGLE TO ECONOMIZE FUTURE }
ENVIRONMENT (SEFE) }**

.....RESPONDENTS

PARTIES:

Applicants are absent

Respondents are present

APPEARANCES:

Barrister Etah Akoh David for the Applicant is present.

Barrister Malle Adolf for the Respondents is also present.

COURT NOTE: This ruling is delivered in open court.

"REPUBLIC OF CAMEROON"

"IN THE NAME OF THE PEOPLE OF CAMEROON"

"R U L I N G"

On the 27th day of February 2012, this court delivered a ruling in which inter alia, the applicants herein were temporarily prohibited from proceeding with their acts on lands found in Mundemba and Toko Sub Divisions until they carried out the mandatory environmental impact assessment as laid down by law.

Sequel to that ruling, the applicants herein filed a motion on notice in Suit No.HCN/003/0S/2011/4M/2012 praying this court for the following;

- (1) An order that applicants have complied with the orders of the court as contained in the ruling of the 27/02/2012.
- 05 (2) Upon grant of the above, that the temporary prohibition orders of this court be lifted.
- (3) And lastly for any order or orders that this court may deem fit and proper to make in the circumstances of the case.

Upon notification of the said motion on Notice on the respondents herein, they
10 raised an objection limine litis on the following points.

Firstly, that this court is functus officio the matters raised in the application.

Secondly, that the mode of commencement of the action is not proper for the proceedings are likely to be hostile in view of the facts deposed to in the affidavit in support of the motion.

15 And thirdly, that the parties in the action are improperly constituted.

As ordained by the rules, the Preliminary objection was heard first. The Learned Barrister Malle Adophe of Counsel for the respondents canvassed legal arguments to justify the above points seriatim.

In respect to the first point he opined that applicants herein are in essence
20 praying this court to review or interfere with its previous orders. He argued that as far as the ruling of the 27/02/2012 is concerned, this court becomes functus officio in the said ruling as at that date. He referred this court to section 18 of law No.2006/015 of 29th December 2006 on judicial organization in Cameroon which defines the jurisdiction of the High courts. He also referred this court to the supreme Court cases in arrete no.
25 159/CC/1991 between: Ayissi Leo Vs. O.M. Rhoom whose rationale was given Judicial approval in the case in arrete No.27/C/D/99-2000 between: Charley Julian Metuge Vs.

Manga Ikome Edward and 2 others in which the Supreme Court held that the South West Court of Appeal was wrong in setting aside its own judgment. He also referred this court to page 347 of Essays on Civil Procedure Vol.1 by Obi Okoye. He prayed this court
05 to hold that it lacks jurisdiction to entertain the action.

In respect to the second point of their objection, Counsel submitted that the issues are so conflicting that affidavit evidence cannot adequately do justice to the case. He referred this court to order 02 rules 1 & 2 of the SCCPR Cap 211, and said the proper mode is by application for writ of summons. He also referred this court to pages 194
10 and 199 of Essays on Civil Procedure by Obi Okoye.

Lastly, Counsel submitted that the proper parties are not in court. He said the parties in the substantive action that led to the ruling of 27/02/2012 from where the motion sought to be dismissed emanated included as defendants one Dr. Timti Isidore who is not cited as party today. And so long as the substantive action before this court
15 derives from the ruling of 27/02/2012, the parties must be the same, unless the other defendant obtains leave of court to drop the deceased co-defendant. On that score he referred this court to pages 242 and 245 of Essays on Civil procedure by Obi Okoye. On the whole he prayed this court to uphold their objection and dismiss the action accordingly.

20 On his part, the Learned Barrister Etah Akoh of Counsel for the applicants in reply said contrary to their contention, this court is not called upon in the substantive action to review its ruling of 27/02/2012. And that even if that were the case the court could under the per in curiam principle appropriately review its own ruling. He argued that parties affected by a ruling could come to the same court unless the facts deposed in
25 the affidavit in support thereof make the previous ruling not tenable.

On the above score, he referred this court to the first order in the ruling of 27/02/2012 which temporarily prohibited them from further operations until the

mandatory environmental impact assessment was done. That order he said exposed them to two alternatives, either to conform with the order and proceed or conform with the order and return to the same court to lift the temporary ban. They elected the second option because they accepted the ruling of the 27/02/2012 as they never appealed against it. Having chosen this second option they doubt how it can be termed hostile. Counsel argued that order 35 of the SCCPR cap 211 cited by counsel for the respondents herein leaves the burden to dispense with a party on them since they were the plaintiffs in the main action that led to the ruling of 27/02/2012. And that the death of Dr. Timti Isidore does not tantamount to the death of the action. Counsel submitted that any party affected by a ruling can appropriately file applications for rulings deriving there from.

On the whole, the Learned Barrister Etah prayed this court to discountenance the Preliminary Objection entirely and dismiss same.

On points of law Barrister Malle Adolphe of Counsel for respondents reiterated that once a defendant dies in case of several defendants the other co-defendants must obtain leave to proceed.

It is from the above argument that this court must derive a verdict. This court shall treat the issues as they were argued. By functus officio is meant "having performed his or her office", that is "without further authority or legal competence" because the duties and function of the court in respect to the particular exercise have been fully accomplished (see Black's Law Dictionary at page 696. The applicants per their prayer one in the substantive action are merely asking this court to establish that they have carried out the mandatory environmental impact assessment as borne out in the ruling of 27/02/2012 which they never appealed against. That request is not similar in any way to that which led to the ruling of 27/02/2012. It is completely out of place to be heard to say this court is by that asked to review its own ruling. This court's duty is

05 simply to appraise the records to find out whether the environmental impact assessment was done or not.

In the same vein this court finds nothing wrong with the mode by which that request is made. The respondents contend that the issues are conflictual necessitating a substantial dispute of facts which can only be resolved by evidence hence only an application for writ of summons is capable of doing justice in the circumstances. The question is, if evidence is to be called who are those to testify. Who are those with locus to institute or file the writ. It must be borne in mind that writs are instituted only by persons who are competent. The competency of the parties determines the competency of the writ itself. For a party to be competent to file a writ, he or she must have vested rights which if proved entitles him to a relief. Can the respondents herein claim to have any vested rights to entitle them to any relief; the answer is in the negative.

It is worthy of note that respondents locus to institute the substantive action that led to the ruling of 27/02/2012 derived from the preamble of the 1996 constitution which provides that "every person shall have a right to a healthy environment. The protection of the environment shall be the duty of every citizen". They instituted it on grounds of policy only.

This preambular provision has force of law pursuant to section 65 of the same constitution which makes the preamble an integral part of the constitution. The right of the respondents derived from the above general policy considerations and nothing more. The issues of particular or individual rights affected can only be raised by persons whose rights are so affected not by the respondents. In the same vein only persons who would derive benefit from the relief sought can appropriately institute or defend an action commenced by writ. Until respondents are able to show the right vested in them they cannot be heard to raise the arguments they purport to contemplate. They are a

05 Non Governmental Organization (N.G.O.) acting on grounds of policy only with no direct
rights vested in them to sue or be sued on behalf of the affected population. As a Non
Governmental Organization (N.G.O.) they raised awareness to the plight of the
population likely be affected and their actions ended at that, until specifically mandated
by the affected people, to sue on their behalf. In respect to the third arm of the
10 objection I agree with Learned Counsel for the applicants that the option is for the
Plaintiff to choose whom to sue.

On the whole I find the objection frivolous and any further actions by the
respondents not tenable at law. At this stage, individual or groups affected by the acts
of the applicants can seek redress in court on account of the affected right. The ruling of
15 the 27/02/2012 was based on matters of policy only, meant to cause compliance with
the law. If the State whose duty it is under the constitution to protect and preserve
minority rights and those of indigenous people certify that those rights have been taken
care of by the applicants, it is not for respondents to challenge that. It is left for the
concerned individual or groups of individuals to lay specific claims against the
20 applicants. The ruling of the 27/02/2012 was clear and unambiguous that the operation
by the applicants be temporarily stopped until the environmental impact assessment is
conducted.

Once it is ascertained by the institutions in place that it has been done, the
prohibitive orders ceases and operations can go ahead. The ruling of the 27/02/2012 was
25 not to frustrate the government in its policy drive to alleviate poverty but to cause
compliance with the laws in force.

On the whole I find the objection *limine litis* frivolous and accordingly dismiss
same with the following consequential orders;

- 05
- 1) That since the competent governmental institutions in place have certified that the applicants have carried out the environmental impact assessment in accordance with the laws in force, the prohibitive orders of this court automatically ceases to exist and applicants can proceed with their operations.
 - 2) The substantive action before this court is irrelevant in the light of the foregoing.
 - 3) The parties shall bear their respective cost.

"IN WITNESS WHEREOF, the present Ruling is signed by the President and the Chief Registrar of this Court".



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10 REGISTRAR-IN-CHIEF
HIGH COURT NDIAN

Simon Ekumene Mbanda
REGISTRAR



[Handwritten signature in blue ink]

PRESIDENT
HIGH COURT NDIAN

FORBANG LESLIE FORMINE
MAGISTRATE

REPUBLIC OF CAMEROON
IN THE NAME OF THE PRESIDENT OF CAMEROON
COURT

On the 27th day of February 2017, the Court delivered a ruling regarding the
the applicants herein who temporarily occupied their plots of land in
lands found in Moundoum and Tokoum Sub-Division. They argued that they had
environmental impact assessment as required by law.