

JOSEPH AND REBECCA MANEHANETAI -v- SAM SOSIMO

**High Court of Solomon Islands
(Muria, CJ.)**

Civil case No. 224 of 1994

Hearing: 8 June 1995

Ruling: 12 June 1995

J. Hawkins for Plaintiff

M. Samuel for the Defendant

MURIA CJ: The defendant, by his Counsel, applies to the Court to have Ivy Sosimo who is the wife of the defendant to be the defendant's next friend in these proceedings. Counsel for the defendant also seeks an order from the Court to join the Housing Finance Corporation as a Third Party to these proceedings.

Counsel for the plaintiffs did not object to the wife of the defendant being made the defendant's next friend in these proceedings accepting the medical certification that the defendant has been suffering from mental disorder. No doubt the reason for not objecting to defendant's wife being made next friend is, apart from medical reason, also to enable the plaintiffs to enforce the default judgement already entered against the defendant. It is necessary then to consider the effect of the plaintiff's acceptance of the defendant's mental disability in this regard.

The doctor's report on the defendant shows that the defendant had been suffering from epilepsy since he was six years old and later subsided. It had however reoccurred in 1984 after the defendant returned from studies and since then the defendant had been unwell. In 1994 the defendant had been intensively investigated for possible organic causes of his illness. He was then put on anti-psychotic and antiepileptic treatment to which he seemed to have responded. He still has poor memory, hallucinations and slurred speech. He is still under treatment for his psychotic problem.

The defendant is clearly suffering from mental disorder and the plaintiffs must be taken to have accepted that, hence, not objecting to the defendant having a next friend in these proceedings. Having done so, the plaintiffs must now accept that the defendant's next friend is appointed so that the case against the defendant can be properly conducted on his behalf.

From the very beginning of the case, the defendant has been incapacitated and has been incapable of conducting his case. If he was incapable of conducting his case by reason of mental incapacity then the provisions of the High Court (Civil Procedure) Rules must be observed.

Under Ord. 17, r15 a person of unsound mind may sue as plaintiff by his next friend and he may also defend an action against him by his next friend. If a writ of Summons is issued against a person of unsound mind and he fails to enter an appearance to the writ of Summons, some proper person must be appointed by the Court to appear and defend the action. This is mandatory and it is incumbent on the plaintiff to seek an order from the court to have this done before he can proceed further with the action against the defendant who is of unsound mind. This is provided for under Ord. 13, r1 which is as follows:

"Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind, the plaintiff shall, before further proceeding with the action against the defendant, apply to the Court for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court at the time of hearing such application shall dispense with such last-mentioned service".

Accepting that the defendant now needs a next friend who is the proper person to conduct the case on his behalf, the plaintiffs are now bound by Ord. 13 r1. That proper person must be allowed to appear and defend the action on behalf of the defendant. Thereafter further proceedings can be taken against the defendant if there is any failure to enter an appearance.

It cannot be right to appoint a next friend so that the plaintiff can be able to enforce a default judgement against a defendant who has been mentally unsound.

The next friend sought to be appointed in this case is the wife of the defendant. Under Ord. 17, r16 a married woman is not prevented from acting as next friend. Ivy Sosimo is therefore capable of acting as the defendant's next friend in this case.

For the above reasons I order that Ivy Sosimo to be appointed next friend of the defendant to conduct the case on behalf of the defendant.

Counsel for defendant also seeks an order to have the Home Finance Corporation joined as a Third Party in these proceedings. The basis for this application is that the defendant was offered the property in Parcel No. 191-041-170 at Panatina Valley in 1992 by the Home Finance Corporation. The defendant and his wife said that they accepted that offer. They have also been occupying the house in Parcel No. 191-041-170 until today.

Counsel for the plaintiffs argued that there was nothing in the supporting affidavit which would sufficiently entitle the Court to join the Home Finance Corporation to these proceedings. Counsel also argued that to join the Home Finance Corporation would cause unnecessary delay to her client's case.

The question whether or not to join a Third Party is discretionary. The Court has discretion to refuse the application if it will result in embarrassment or delay in the plaintiff's action. See *Swansea Shipping Co. -v- Duncan* (1876) 1QBd 644; *Bower -v- Harley* (1876) 1 QBd 652.

I think, however, that it is not incumbent on the defendant to substantiate the merit of his claim to issue Third Party notice when making the application. All that he has to show is that he has a *prima facie* case for joining a Third Party. See *Edison & Co. -v- Holland* (1886) 33 Ch. D. 497.

In the present case, I feel that the affidavit filed by the defendant's wife and now next friend discloses *prima facie* case for the claim of joining the Home Finance Corporation as Third Party to these proceedings. The Court, in its discretion, order that Home Finance Corporation be joined as Third Party to these proceedings.

Normally application to issue "third party notice" is made after appearance has been entered. However in view of the circumstances of this case the Court has been prepared to deal with this application now. However, the "third party notice" shall not be issued and shall not be served until after appearance has been entered by the defendant's next friend to the writ of summons in this case.

No order for costs.

(Sir John Muria)
CHIEF JUSTICE