

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:-

JOHN OBEY DEVELOPMENT INVESTMENT CO. LTD. - AFFILIANTS

AND

AFRICANA TOKEN VILLAGE LIMITED - RESPONDENTS

CORAM:-

HON. MR. JUSTICE K.C. JOSEPH - JUSTICE OF APPEAL  
HON. MR. JUSTICE G. ELIAH-KING - JUSTICE OF APPEAL  
HON. MR. JUSTICE A.B. TELLE - JUSTICE OF APPEAL

Terence Terry, Esq., for the applicants.

Berthan Macaulay (Jnr), Esq., for the respondents.

RULING DELIVERED THIS 24TH DAY OF MAY, 1994.

G. ELIAH-KING J.A.: In their notice of motion dated the 10th day of May, 1994, the applicants proposed to apply to this Court, inter alia, for Orders granting an Interim Stay and a Stay of this Court's Stay of Execution Order on terms, dated the 26th April, 1994, pending appeal to the Supreme Court, enlargement of time within which to appeal and for leave to appeal to that Court against our said Stay of Execution Order. They were also going to apply for a Stay of all subsequent proceedings including our consequential Orders in the event of our being pleased to grant them the said leave.

In this Court's Ruling of 26th April, 1994, we ordered, inter alia, that the order of Patricia Macaulay J. dated 4th February, 1994, be set aside and granted the respondents a Stay of Execution on terms pending the hearing and determination of the respondents' appeal herein.

The respondents take a preliminary point which, if successful, will make short shrift of the applicants' motion. The main thrust of their objection lies in the provisions of S 123 (1) (a) (c) of the Constitution of Sierra Leone Act No. 6 of 1991 which state as follows:-

"An appeal shall lie from a judgement, decree or order of the Court of Appeal to the Supreme Court

- (a) as of right in any civil cause or matter.....
- (c) with the leave of the Court of Appeal in any criminal cause or matter, where the Court of Appeal is satisfied that the case involves a substantial question of law or is of public importance".

In the earlier Constitution, Act No. 12 of 1978, now repealed, S 103 (1) (a) provided that an appeal to the Supreme Court from this Court was as of right

in a civil matter where the amount of value of the subject matter in dispute was not less than amount to be determined by Parliament or

"(c) with the leave of the Court of Appeal, in any other cause or matter, civil or criminal, where the Court of Appeal is satisfied that the case involves a substantial question of law or is of public importance."

Quite clearly, therefore, the right to appeal has changed under the 1991 Constitution. Now it is in a criminal cause or matter that leave is needed and not in a civil matter. What is before this Court is a civil matter and appeal to the Supreme Court is as of right.

Rule 6 (1), (a) and (c) of the Supreme Court Rules, P.N. No. 1 of 1982, are not surprisingly ipsissima verba S. 103 (1), (a) and (c) respectively of the 1978 Constitution since those Rules were made after the coming into force of that Constitution and before the enactment of the 1991 Constitution. That being the case, as existing law, it must 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." Vide S.170 (5) of the 1991 Constitution. Put simply, the consequence is that the provisions in the Constitution prevail.

It follows that since appeal is as of right, the application for leave to appeal is not properly before us and so are the other applications contained in the notice of motion.

The preliminary objection of Mr. Berthan Macaulay (Jnr) is upheld. The motion is ~~struck~~ out with costs to the respondents, such costs to be taxed.

(Sgd) Hon. Mr. Justice Gelaga-King ..... Justice of Appeal

I Agree (Sgd) Hon. Mr. Justice M.O. Adophy ..... Justice of Appeal

I Agree (Sgd) Hon. Mr. Justice A.B. Timbo ..... Justice of Appeal