MISC. APP. 41/93

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:-

JOHN MICHAEL MOTORS LTD. - RESPONDENTS/APPLICAN

AND

CASTROL LTD - APPELLANTS/RESPONDEN

CORAM:-

HON. MR. JUSTICE M.O. ADOPHY - J.A. (PRESIDING)
HON. MR. JUSTICE A.B. TIMBO - J.A.
HON. MRS JUSTICE V.A.D. WRIGHT - J.A.

RULING DELIVERED ON THE 16TH DAY OF JUNE, 1994.

TIMBO - J.A.:

The applicants by notice of motion dated the 3rd day of November 1993 moved the Court under rule 15 of the Court of Appeal Rules 1985 (P.N.29 of 1985) for the following orders:

"(1) That the appellants give additional security for costs i the sum of Le90,000,000(Ninety Million Leones) for the costs of and occassioned by the appeal for such time as the Court shall deem fit.

(2) That until such security be given the said appeal be stayed.

(3) That in default of such security being given within the aforesaid time required by this Honourable Court the said appeal be dismissed with out further order as to costs.

(4) That the appellants pay the costs of the application."

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The application is supported by the affidavit of Francis Aine Dandeson Gabiddon sworn to on the 1st day of November 1993 to which is annexed several exhibits.

Mr. Serry Kamal on behalf of the applicants submitted inter alia that considering the respondent company has no asets within the jurisdiction coupled with the fact that it is resident outside Sierra Leone to be able to satisfy any judgment debt or costs should the appeal fail, it will be just and proper to order the payment of additional security for costs against the respondents. He further argued that th amount stipulated by the Registrar as security bears no relation whatsoever to the sum actually claimed by his clients.

Mr. Berthan Macauley Jnr. on the other hand while not disputing that security for costs should be paid by his clients, nevertheless contended that the facts of the respondent company living abroad and having no assets in Sierra Leone should not be taken into consideration when determining the quantum of security to be given; nor the amount of the judgment sum. Security for costs in his submission shou be limited only to the probable costs of the appeal.

The questionsthat arise in this application are in my opinion simply - can this Court properly increase the amount of security already fixed by the Registrar? If so, by how much?

Rule 15 of our rules provide, :-

> "The Court may, where necessary require security for costs or for performance for the orders to be made on appeal in addition to the sum determined under rule 14."

By rule 14,

> "The Appellant shall within such time as the Registrar shall fix deposit such sum as shall be determined by the Registrar or give security thereof by bond with one or more sureties to his satisfaction as the Registrar may direct for the due prosecution of the appeal and for the payment of any costs which may be ordered to be paid by the appellant."

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I am satisfied that rule 15 as we have seen clearly vests us with the full authority to increase whatever amount of security that has been ordered by the Registrar under rule 14.

Turning to the question of the quantum, I find the observation of Lindley M.R. in Dominion Brewery Ltd v. Foster (1897) 77 L.T. 507 very pertinent. He had this to say:-

"It is obious that, as to a question of quantum such as this, you cannot lay down any very accurate principle or rule. The only principle which as it appears to me can be said to apply to a case of the kind is this, that you must have regard, in deciding upon the amount of the security to be ordered to the probable costs which the defendant will be put so far as this can be ascertained. It would be absurd, of course to take the estimate of the Managing Clerk to the defendants' Solicitors and give him just what is asked for. You must look as fairly as you can at the whole case".

This view was supported by Chitty L.J, when he said,:

"I really do not see how we can lay down any rule more useful than that or any rule more precise. There must be some estimate made as to what expenses the defendant will be put to, and the Court has to take a reasonable view of all the cricumstances, the nature of the suit or any other matters that may properly be brought in."

And more recently, Cummings-Bruce L.J. after copiously reviewing the authorities said in Procon Ltd. v. Provincial Building Co. (1984) 2 ALLER 368 at P. 376,

"The security should be such as the Court thinks in all the circumstances of the case is just".

Mr. Gabiddon deposed in paragraphs 16 and 17 of his affidavit as follows:

"16 That the appellants reside and carry on business outside the jurisdiction of Sierra Leone".

"17 That the appellants have no assets in Sierra Leone to satisfy any judgment or costs awarded against them if the appeal fails or assets that would be available for execution if necessary".

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Since it is not denied that the respondents have no assets within the jurisdiction it is obvious that any judgment or order for costs by this Court will of necessity have to be enforced outside Sierra Leone, a process that will no doubt consume time and involve considerable expense on the part of the applicant company. If on the other hand, there were and would continue to be sufficient assets wit in the jurisdiction the case for security or for that matter, additio al security would be greatly weakened. As was said by Sir Nicholas Browne-Wilkinson V.C. in Porzelack K.G. v. Prorzelaik (U.K.) Ltd. (1987) 1 ALLER 1074 at page 1077,

> "The purpose of requiring security from an overseas resident plaintiff is as I have said to provide a fund subject to the jurisdiction against which an order for costs can be readily enforced".

Taking all the circumstances of this application, we believe that an award of Le10 million as additional security for costs is not unreasonable. We are also of the view that the sum of Le90 Million sought by the applicants is too high in the absence of evidence to substantiate the said amount as the probable costs of the appeal. A plaintiff or appellant should not be driven from the seat of judgment unless the justice of the case makes it imperative.

We accordingly make the following orders:-

1. That the respondents do enter into a further bond in the sum of Le 10 million with one surety to be approved by the Registrar of the Court of Appeal within seven (7) days from the date of this order.
2. That until such security be given the appeal be stayed. Costs in the cause.

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A.B. TIMBO - J.A.

I agree:.....

M.O. ADOPHY - J.A.

I agree:.....

V.A.D. WRIGHT - J.A.