

IN THE COURT OF APPEAL FOR SIERRA LEONE

BETWEEN:-

KATHERINE P.S. BANGURA
AND
MOHAMED SOLOMON - DEFENDANTS/APPLICANTS

A N D

ALHAJI GASSIMU JAH - PLAINTIFF/RESPONDENT

CORAM:

HONOURABLE MR. JUSTICE G. GELAGA-KING - J. A.
HONOURABLE MR. JUSTICE A. B. TIMBO - J.S.C.
HONOURABLE MR. JUSTICE N. D. ALHADI - J. A.

BETTS AND BEREWA FOR THE APPLICANTS
YADA WILLIAMS ESQ. FOR THE RESPONDENT

RULING DELIVERED ON THE 6th DAY OF July, 2000

TIMBO, J.S.C.

This is an application by notice of motion dated the 28th day of October 1993 on behalf of the applicants seeking the following orders:

- (1) The defendants/applicants herein be granted an extension of time within which to appeal against the judgment and order of the High Court made on the 2nd day of July, 1993 by the Honourable Mrs. Justice V.A.D. Wright in the action intituled:

"CC. 94/90 J. No. 8

IN THE HIGH COURT OF SIERRA LEONE

BETWEEN:

ALHAJI GASSIMU JAH - PLAINTIFF

AND

KATHERINE P.S. BANGURA - 1ST DEFENDANT

AND

MOHAMED SOLOMON - 2ND DEFENDANT

- (2) That a Notice of Appeal be filed within the time so granted.
- (3) That the Court be pleased to grant a stay of proceedings and execution of the judgment of the High Court dated the 2nd July 1993 in the matter herein.
- (4) Further or other Relief.

The application is supported by the joint affidavit of Katherine P.S. Bangura and Mohamed Solomon the applicants herein dated the 28th day of October 1993. Paragraph 5 of the said affidavit is crucial in my view to the determination of this application. The applicants averred therein as follows:

"5 That we have been advised by the firm of Betts and Berewa that the grounds of appeal drawn up in Exhibit "A" are good grounds but they expressed the view that the Notice of Appeal has been filed out of time, since it should have been filed by the 1st October 1993"

It is interesting to note that in arguing the motion, counsel for the applicants with great candour admitted like the applicants had done in their joint affidavit that the appeal had certainly been filed out of time. He referred us to the case of Alphonso Campbell and others V. The State SC. CR. App. No. 4/82 (unreported) - ruling delivered by Luke C.J. on the 4th July 1983 on the computation of time.

Having thus clearly conceded that the appeal was outside the prescribed period ⁹ can ~~we~~ on ~~part~~ ^{my} part grant the applicants an extension of time, in order to file their appeal out of time? Rule 11 subsections (1) and (6) in particular of the Court of Appeal Rules (PN No. 29 1985) are pertinent in this respect.

Rule 11 (1) states:

"No appeal shall be brought after the expiration of fourteen days in the case of an appeal against an interlocutory decision or of

three months in the case of an appeal against a final decision unless the court enlarges the time".

Rule 11 (6) on the other hand emphatically directs that,

"6) No application for enlargement of time within which to appeal shall be made after the expiration of the time prescribed within which an appeal may be brought".

Regretably, with the facts before ^{us} ~~us~~ ^{we} ~~we~~ ^{are} ~~are~~ unable to allow the applicants an extension of time within which to lodge their appeal because as we have already ^{mentioned} ~~seen~~, rule 11(6) says ^{we} ~~we~~ cannot.

ASJ On the third order sought i.e. to stay execution, I believe in view of what ^{we} ~~we~~ have already said above this question now becomes a purely academic as an application for a stay can only be entertained where there is a valid appeal pending which is not the case here. This apart, by rule 64 of the Court of Appeal rules an application for a stay must first be made to the Court below. There was no evidence that an application had been made to the High Court for a stay of execution of the judgment of Wright J (as she then was). So, *ASJ* even if there was no rule 11(6), ^{we} ~~we~~ would still not have been in a position to grant the stay sought because of rule 64.

The application is accordingly dismissed with costs.

ASJ
.....
Hon. Mr. Justice A.B. Timbo, JSC

I agree:.....
Hon. Mr. Justice G. Gelaga-King, J.A.

ASJ
I agree:.....
Hon. Mr. Justice N.D. Alhadi, J.A.

Misc. App. 39/93

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CORAM:-

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- J.A.

HONORUABLE MR. JUSTICE A.B.TIMBO

- J.S.C.

HONOURABLE MRS. JUSTICE N.D. ALHADI

- J.A.

BETIS AND BEREWA FOR THE APPLICANTS

YADA WILLIAMS ESQ., FOR THE RESPONDENT

ALHADI J.A.

I agree with the Ruling just delivered by my Learned Brother ^{that} on the affidavit evidence before us that the Application should be dismissed more so as there is no evidence that the non-compliance was not wilful

(Sgd) Hon. Mr. Justice N.D. Alhadi-