

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:-

ALHAJI BOCKARIE KAKAY

- APPELLANT/APPLICANT

A N D

CLEMENTINA YAMBAKU

- RESPONDENT/RESPONDENT

(As Administratrix of the
Estate of Claris Clementina
Davies)

CORAM:-

Hon. Mr. Justice E.C. Thompson-Davis

- JSC

Hon. Miss Justice Patricia Macaulay

- J.A.

Hon. Mr. Justice A.B. Rashid

- J.

J.B. Jenkins-Johnston Esq., for the Appellant/Applicant

V.V. Thomas Esq., for the Respondent/Respondent

RULING DELIVERED THIS 10th DAY OF April 2001

RASHID J.A.

This is an application by way of Notice of Motion dated 29/12/2000 by J.B. Jenkins-Johnston Esq., Counsel for the Appellant/Applicant. That the Order of Dismissal made by this Court on 12/1/2000 dismissing the Appeal of the Applicant Civil Appeal No.1/98 for Non Compliance of Rules 13(4) and 14 of The Court of Appeal Rules PN No. 29 of 1985 be set aside by the Court and the said Appeal restored on such terms as it may think fit pursuant to Rule 16(3).

The Applicant will further rely that it was not proper for the Trial Judge who tried the matter in the High Court to have sat on the panel which dismissed the Appeal.

The Application is supported by the Affidavit of the Applicant sworn to on the 29/12/2000 and filed herein with several exhibits. There is also a supplemental affidavit by the Applicant sworn to on the 19/12/2000.

There is an Affidavit in Opposition sworn to by the Respondent on the 8/1/2001 with several exhibits.

I shall now consider the second ^{link} line of the relief sought that it was not proper for the Trial Judge who tried the matter in the High Court to have sat on the panel which dismissed the appeal. In his submission J.B. Jenkins-Johnston Counsel for the Appellant/Applicant said that the Trial

Judge was M.E. Tolla-Thompson J. and that it was the same M.E. Tolla-Thompson J.A. one of the Justices who sat on the panel to dismiss the Appeal Pursuant to Rule 16(1) of the Court of Appeal Rules FN No. 29 of 1985 for Non Compliance of the requirements of Rules 13(4) and 14.

He urged the Court to set aside the Order of Dismissal and the Appeal be restored Pursuant to Rule 16(3) of the Court of Appeal Rules FN No. 29 of 1985. Mr. V.V. Thomas Counsel for the Respondent has vehemently opposed the application.

He said that the Affidavit in Support has not shown good and sufficient cause. He submitted that when M.E. Tolla Thompson J.A. sat on the panel which dismissed Civil Appeal 1/98 for Non Compliance of Rule 13(4) and 14 he did not take part in any Hearing of an Appeal. He said that when the Registrar invoked Rule 16(1) of the Court of Appeal Rules it was to certify that the Appellant had failed to comply with any of the requirements of Rules 13(4) and Rule 14 to the Court. He argued that this was not a hearing of the Appeal. He submitted that an Appeal is a Judicial Examination by a Superior Court on the decision of an Inferior Court.

He said that what happened in Ex "G" was not a Hearing of an Appeal. Rule 16(1) of the Court of Appeal Rules states:-

"If the Appellant has failed to comply with any of the requirements of Rules 13(4) and 14. The Registrar shall certify such facts to the court which may thereupon order that the Appeal be dismissed with costs or without costs."

It seems to me that as a result of the failure of the Appellant to comply with Rules 13(4) and 14 that the Registrar invoked Rule 16(1). That remains to be considered is whether when the Registrar certified such facts to the court was it a hearing of an Appeal?.

In my view an appeal is a Judicial Examination by a Superior Court of the decision of an Inferior Court. What took place in Exh "G" was it a hearing?.

In my humble Judgement it was not a hearing. I shall now consider the first limb of the relief sought. That the Order of dismissal, be set aside by the Court and the said Appeal restored on such terms as it may think fit Pursuant to Rule 16(3). Rule 16(3) states:-

"An Appellant whose Appeal has been dismissed under this rule may apply by Notice of Motion that the Order of Dismissal be set aside and the Appeal be restored and the Court may in its discretion for good and sufficient cause order that the Appeal be restored

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upon such terms as it may think fit. "

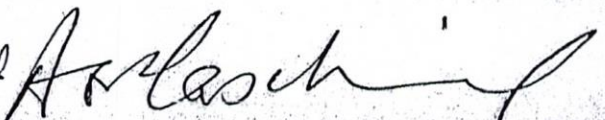
The material averments on which the application rests are contained in Paragraphs 4, 5, 6, 8 and 10 of the Affidavit in support of the application sworn to on the 29/10/2000 and Paragraphs 3, 4, 5, and 6, 9 of the Supplemental Affidavit sworn to by the Appellant/Applicant on the 19/2/2001 which are to the effect that his failure to pursue the appeal on time, was due to the Coup de 'tat' of the 25/5/97 and that he had to leave Sierra-Leone . Thereafter he had been in and out of Sierra Leone for Medical Treatment in Guinea.

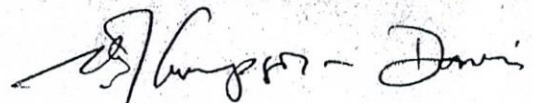
He denies being in contempt of the Courts Order. Mr. V.V. Thomas Couns for the Respondent has apposed the application. He submitted that for the affidavit to be good and sufficient for the Court's consideration it ought to show good and sufficient reasons . He said that the onus is on the applicant to show good and sufficient reasons .

He said that the applicant has been contemptuous of the Court's Order in that after the Judgement the Appellant continued to flout the Court's Order. He relies on Paragraphs 4, 5, 6, 7, 8, 9, to 12 , 13 of the Affidavit in Opposition .

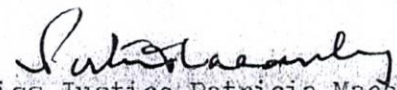
I pause here to say that this application is not to be granted as a matter of cause. To be entitled to the indulgence of the Court the applicant must show cogent credible and ~~convincing~~ reasons for the delay. In the instant case I do not believe that the applicant has been honest to the court In In coming to this conclusion I have taken cognisance of the applicants' Affidavit in support and the Respondents' Affidavit in Opposition. These put together show that the applicant has not acted bona fides. In view of the conclusions I have reached I am convinced that the application ought to be refused. I accordingly refuse it.

*Costs of 6250,00 awarded
in favour of Rep.*


Hon. Mr. Justice A.B. Rashid-J.



I agree.....Hon.Mr. Justice E.C.Thompson-Davis -J.S.C.


I agree.....Hon.Miss Justice Patricia Macaulay - J.A.