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CIV.APP. 28/2001

IN THE COURT OF APPEAL FOR SIERRA LEONE

BETWEEN:-

MUSTAPHA T. KOROMA  
TRADING AS "KAMTOKO AFRICA TRADING LINKS - APPLICANT"

AND

LAMRANA SOW  
ALAS MOHAMED LAMRANA SOW & ORS. - RESPONDENTS

CORAM:-

HON.MR.JUSTICE M.E. TOLLA THOMPSON - J.A.  
HON.MR. JUSTICE A.N.B. STRONGE - J.A.  
HON.MR. JUSTICE A.B. RASCHID - J.

E.E.ROBERTS ESQ., FOR THE APPELLANT  
N.D. TEJAN COLE ESQ., WITH HIM A.F. SERRY-KAMAL ESQ., FOR THE  
1<sup>ST</sup> DEFENDANT/RESPONDENT.

RULING DELIVERED THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2001

TOLLA THOMPSON J.A.

On the 7<sup>th</sup> of November, 2001 the Appeal – Civ.APP.28/ 2001 Mustapha Koroma Appellant v. Lamrana Sow Respondent came before the court for dismissal pursuant to Rule 16(1) of the Court of Appeal Rules Public Notice No.29 of 1985 for failing to fulfill the statutory requirements Under Rule 13(4) and 14 respectively.

As it happened this day was the day Learned Counsel for the Appellant Mr. E.E .Roberts was to continue his argument in Misc.App. 11/2001 for a stay of execution Pending the determination of the above Appeal.

When the Appeal was mentioned for dismissal Mr. Roberts appears for the Appellant and pleaded with the court not to dismiss the appeal and ask the Court for an adjournment to fulfill the requirements.

Mr. Serry-Kamal who was also in Court appeared for the Respondent and opposed the adjournment and submitted that the Appeal should be dismissed and that the Appellant can come again Under Rule 16(3) of the Court of Appeal Rules.

The application was granted. The Appeal was adjourned to the following day.

When the matter came up the following day Mr. Roberts had filed an Affidavit giving reason for non-compliance and said he has now complied. Mr. Serry-Kamal in his submission insisted that the Appeal ought to be dismissed and that the Affidavit filed is not relevant to Rule 16(1). It is more in tune with Rule 16(3) when there is an application for the extension of time, after an Appeal has been dismissed under this Rule. And in this case there is no application for extension. The Court heard further divergent argument, on the interpretation on Rule 16(1) of the Court of Appeal Rules Public Notice No. 29 of 1985.

Rule 16(1) states:-

"If the Appellant has failed to comply with any of the requirement of Rules 13(4) and 14 respectively the Registrar certificate shall certify Such facts to the Court which may thereupon order that the Appeal be dismissed with or without cost."

On a close scrutiny of the above requirement the following can be gleaned

1. The Appellant must have failed to comply with Rules 13(4) and 14 respectively.
2. The Registrar must have certified to the Court that the Appellant has not fulfilled the requirements stated in Rules 13(4) and 14.
3. The Court may dismiss the Appeal.

It is not in dispute that when the Appeal came before the Court of Appeal for dismissal the Appellant had not complied with Rule 13(4) and 14 of the Court of Appeal Rules within the time specified by the Registrar for compliance. The Appeal was ripe for dismissal.

However I hasten to add that the Court dismissal of the Appeal depends on the circumstances of the particular case. For instance where there is no application touching and concerning the Appeal. I hasten to add further that in my view the action of the Court of Appeal Under Rule 16(1) in dismissing the Appeal is akin to an administrative action which even a single judge could perform.

I agree with Mr. Serry-Kamal, the averments in the affidavits filed by the applicant is more suited for an application Under Rule 16(3) where an Appellant comes by way of a Motion to ask for enlargement of time. See the unreported case of Alusine Fawaz v. Santigie Kamara of Civ.App. 37/76 and more recently the unreported case Alhaji Bockarie Kakay v. Clementina Yambasu. Misc.App. 32/2000.



But even if I am minded to exercise my discretion in favour of the Appellant there are certain factors in this particular case which have influenced me not to do so. They are:-

1. The averments in the affidavit filed have not shown sufficient And cogent reasons for me to agree that it was an oversight on the Appellant.
2. Mr. Roberts the Appellant Counsel has not been candid to this Court as he continued to argue the application for a stay of Execution knowing that he has not fulfilled the requirements (For example the argument of the 1<sup>st</sup> November, 2001. But for the fact that the Registrar brought it to the notice of the court, the court would not have known that the appellant had not fulfilled the conditions. The application would have gone on and on and if a stay is granted, not only would it be a pyrrhic decision and exercise in futility, but worse still the court would have been embarrassed to know that an appeal is not before us.
3. I have had the opportunity to peruse some of the decision of this Court on this point. I was a member of the panel in one or two of them. I am hard press to see a case in which the court exercised his discretion in favour of the Appellant Under Rule 16(1).
4. From my experience in this court, whenever the court has been called upon to exercise its discretion in this type of cases in favour of the appellant; it has done so under Rule 16(3) of the Court of Appeal Rules. I see no reason in this case to deviate from this position.

In the result I shall dismiss the Appeal Pursuant to Rule 16(1) with cost.

The cost is assessed at Le100,000.

(Sgd) Hon.Mr. Justice M.E.Tolla-Thompson-J.A.

I Agree.....Hon.Mr.Justice A.B.Raschid - J