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Misc. App. 11/2003

**IN THE COURT OF APPEAL OF SIERRA LEONE**

**BETWEEN:**

**T. KRISHNAKUNAR - DEFENDANT/APPLICANT**

**AND**

**MOHAMED JUMA JALLOOH - PLAINTIFF/RESPONDENT**

**CORAM: HON MR JUSTICE M.E.T. THOMPSON, J.A. (Presiding)**  
**HON MR JUSTICE G. GELAGA KING, J.A.**  
**HON MS JUSTICE P.E. MACAULAY, J.A.**

C.F. Margai, Esq., for the applicant  
Dr A.R. Renner-Thomas for the respondent.

**RULING DELIVERED ON THE 18<sup>TH</sup> DAY OF DECEMBER, 2003**

HON MR JUSTICE G. GELAGA KING, J.A. On the 7<sup>th</sup> day of February, 1997, Massally J. in the High Court delivered judgement in favour of the respondent awarding him the sum of US\$18,000 and interest thereon at the rate of US\$12/00 per centum per annum, together with costs. On the 26<sup>th</sup> day of February 1997, the applicant filed a Notice of Appeal against the said judgement. On the 28<sup>th</sup> day of August 2001 the Registrar of this Court, pursuant to rules 13(4) and 14 of the Court of Appeal Rules, required the applicant to fulfill the stated conditions of appeal not later than the 5<sup>th</sup> day of October, 2001. On the 3<sup>rd</sup> day of September 2001 the Process Server filed an affidavit of service of the said conditions on the applicant's solicitor on 29<sup>th</sup> August 2001. On the 8<sup>th</sup> day of October 2002, consequent upon the Registrar's certificate to that effect, the appeal herein was dismissed under rule 16 (1) for non compliance with the requirements of rules 13(4) and 14.

Eight months after the dismissal and five years after judgement was delivered in the High Court, the applicant on the 24<sup>th</sup> day of June 2003, filed a notice of motion in this Court applying for an order that the appeal which was dismissed be restored "on the grounds of natural justice and advancement of law." The application is supported by an eighteen paragraphs affidavit and an almost equal profusion of exhibits. It is pertinent to point out at this stage that an appellant whose appeal has been dismissed under rule 16 (1) needs to apply for two orders: (i) that the order of dismissal be set aside and (ii), that the appeal be restored. See rule 16 (3). I note that (i) has not been applied for in this case. It is only after those two requirements are met that "the Court may in its discretion,



for good and sufficient cause, order that the appeal be restored upon such terms as it may think fit."

The applicant has not stated in his affidavit the grounds of natural justice on which he relies, nor has he revealed to this Court his basis for predicting that restoration will lead to the advancement of law. Would a refusal to restore lead to retrogression in law? It must always be borne in mind that the Court's discretion will be exercised only on well established principles, preeminent among them is the requirement that it be exercised judicially. It follows that the discretion will not be exercised as a matter of course in favour of an applicant unless that party clearly satisfies the Court that he has good and sufficient cause for the appeal to be restored.

Mr Margai for the applicant in explaining the eight months' delay deposed that he was a Minister and could not have represented the applicant before now. Furthermore, that on enquiries he made from Mr Shears-Moses whom he thought was representing the applicant and the latter's reply, he was "undoubtedly labouring under the mistaken belief that both appeals were being prosecuted by him as had been requested which was not in fact the case." He states that when he resigned on 8<sup>th</sup> January 2002 he did not return to legal practice until he secured an office "in December, 2003" sic. "That in the same month, I took ill and had to be hospitalized from 27/12/02 to 10/1/03..."

It is crystal clear to me that counsel's illness cannot be a justifiable excuse in the circumstances, for the simple reason that he only fell ill sixteen months after the conditions of appeal had been served on him! That is to say twelve months after the deadline to fulfill the conditions. And let me say this, if a legal practitioner is made a Minister and has to leave practice, the responsible and sensible thing for him to do in the interests of his clients, is to arrange for someone else to take over his legal practice. As Dr Renner Thomas submitted, nothing was done to prosecute the appeal.

I need not remind practitioners that rules of this Court, P.N. 29 of 1985, have the force of statute. They derive their efficacy from s.145 of the Constitution of Sierra Leone, Act No.6 of 1991 and are designed to regulate the practice and procedure of this Court and to prevent "frivolous and vexatious proceedings." As I said in the unreported case of Mohamed Fofanah v. Mohamed S. Turay, Misc. App. 40/87, in which Dr. Renner-Thomas appeared for the applicant, when we refused to enlarge time, "rules of this Court governing appeals must be strictly observed." Rule 16 (3) provides a procedure whereby non-compliance may be remedied. But quite clearly how can it possibly be said that the reasons proffered by the applicant show good and sufficient cause? Besides, how does one remedy non-compliance twelve months after the deadline set by the Registrar?

One of the main objects, if not the overriding purpose, of these rules is to limit the time during which an appeal could be kept hanging over a successful litigant's, in this case the respondent's, head, and during which time he could be prevented from enjoying the fruits of his judgement. In my judgement, the Court sees it as its duty to protect the interests of respondents, who already have a decision of a competent authority in their favour, by insisting on all reasonable expedition and strict compliance with the timetable laid down. See Hyams v. Plender [2001] 1WLR 32 C/A. *Interest reipublicae ut sit finis litium*. I would dismiss the appeal.

I agree

Hon Mr Justice M.E.T. Thompson

*[Signature]*  
M.E.T. Thompson

I agree

Hon Ms Justice P.E. Macaulay

*[Signature]*  
Hon Ms Justice P.E. Macaulay

Costs assessed by Court at Le 500,000/00  
*[Signature]*