

IN THE COURT OF APPEAL OF SIERRA LEONE

Misc. App.7/04

BETWEEN:

MRS. MATILDA VICTORIA SESAY

APPLICANT

AND

THE ATTORNEY-GENERAL

RESPONDENT

CORAM:

Hon. Sir John Muria JA

Hon. Ms. U.H. Tejan-Jalloh JA

Hon. Ms T.A. Doherty J.

HEARING: 1 April 2004

JUDGMENT: 4 June 2004

Advocates:

Applicant: C.J. Peacock

Respondent: C.E. Roberts

Judgment

Delivered this 4th day of June 2004.

Muria J A. This is an application by way of Notice of Motion by the applicant, seeking a number of orders bearing on the Report of the Commission of Inquiry conducted by the Hon. Justice Mrs. Laura Marcus-Jones on the leasing and sale of State Lands in the Western Area in 1999. The orders sought in this application are:

1. That this Honorable Court do hereby grant an extension of time which the Applicant may file a Notice of Appeal to the Court of Appeal against findings, Report and Government White Paper of Honorable Justice MRS LAURA MARCUS-JONES, commission of inquiry on the leasing and sale of State Lands in the Western Area of 1999.

2. That this Honorable Court do grant leave to the Defendant/Applicant to file in a Notice of Appeal to the Court of Appeal against the findings, Report and Government White Paper of Honorable Justice MRS. LAURA MARCUS –JONES, Commission of inquiry on the leasing and sale of State Lands in the Western Area of 1999.
3. That this Honorable Court do hereby grant an interim stay of the proceedings in the High Court pending the hearing and determination of the Appeal in the Court of Appeal.
4. That this Honorable court do hereby grant a stay of proceedings in the High Court, pending the hearing and determination of the Appeal in the Court of Appeal.
5. Any other Order(s) as this Honorable Court may deem fit and just.
6. That the costs of this application be costs in the cause.

Background

The background to this application was that due to complaints of irregularities over the allocation and disposition, and encroachment of both private and State Lands, the government set up a commission of inquiry to enquire, investigate and examine and make recommendations regarding the laws, procedure and disposition of State Land. The Commissioner, Hon. Justice Mrs. Laura Marcus-Jones, heard evidence from witnesses and made findings and recommendations which were made in a 1999 Report (Report of Commission of inquiry) and presented to His Excellency the President in January 2000. Following that Report of the Commission of Inquiry, the Government produced its White Paper based on the Report and Recommendations of the Commission of Inquiry. Issues raised in the Report led the Government to further investigate matters relating to land allocations in the Western Area. The Government White Paper was published in October 2000 (hereinafter referred to as “the GWP”).

Application for Extension of Time

The applicant seeks to appeal against the "findings, Report and Government White Paper of Hon . Justice Mrs. Laura Marcus-jones, Commission of Inquiry "on the leasing and sale of state lands in Western Area. Having realized that the Report and GWP were issued in 2000, and being advised of the right of appeal under S.149 (4) of the Constitution, the applicant seeks an extension of time to appeal. The power to grant an extension of time is discretionary, with the party seeking the extension bearing the burden of establishing the basis of granting it.

Section 149(4) Constitution

The right of appeal under S.149(4) of the Constitution gives a person against whom an adverse finding has been made by the Report of the Commission of Inquiry the right to appeal to the Court of Appeal. It

is pursuant to that provision that the applicant comes to this Court seeking to be given extended time to exercise her right under the provision to appeal against the finding of the Commission of Inquiry. It should be noted that before the Court can grant an extension of time to appeal, the applicant must bring herself within the ambit of Section 149(4) of the Constitution, that is to say, her grievance stems from an adverse finding by the Commission of Inquiry. As the applicant seeks to appeal against both the Report and the G.W.P, it would be helpful to consider the whole of Section 149 of the Constitution which provides:

“(1) The Commission of Inquiry shall-

(a) Make a full, faithful and an impartial inquiry into any matter specified in the Commission of appointment.

(b) Report in writing the result of the inquiry ; and

(c) Furnish in the report the reasons leading to the conclusions arrived at or reported.

(2) The President shall, subject to the provisions of subsection (4), cause to be published the report of a commission of Inquiry together with the White Paper thereon within six months of the date of submission of the report of the Commission

(3) Where the report of a commission of Inquiry is not to be published, the President shall issue a statement to that effect, giving reasons why the report is not to be published.

(4) Where a Commission of Inquiry makes an adverse finding against any person, which may result in a penalty, forfeiture or loss of status, the report of the Commission of Inquiry shall, for the purposes of this Constitution, be deemed to be a judgment of the High Court of Justice and accordingly an appeal shall lie as of right from the Commission to the Court of Appeal.

Subsection (4) gives an aggrieved person the right to challenge a finding of the Commission of Inquiry by a right of appeal to the Court of Appeal. In order to do so, “the report” of the Commission of Inquiry has been deemed to be a judgment of the High Court from which an appeal lies to the Court of Appeal. It

will be observed that the right of appeal under subsection (4) of Section 149 of the Constitution lies against an adverse finding in the report of the Commission of Inquiry and in this case, the Commission of Inquiry appointed on the 27th October 1988 by His Excellency The President under Section 147 (1) of the Constitution and published in the Sierra Leone Gazette on 27th November 1998.

Report of the Commission of Inquiry and GWP

Section 149 (2) of the Constitution makes mention of the “White Paper “which is produced following the submission of the report of a Commission of Inquiry; to the Government. A “White Paper”, otherwise called ‘Government White Paper’ contains the government’s policy statement which is issued for the information of Parliament. In the present case the 1999 report of the Commission of Inquiry was furnished to His Excellency the President in January 2000. The Government White Paper, prepared following the report of the Commission of Inquiry was produced in October 2000 more than six months after the report was furnished to His Excellency the President as required by section 147 (2) of the Constitution.

When asked by the court, whether the GWP formed part of the ‘report of the Commission of Inquiry, for the purpose of subsection (4) of Section 149 of the Constitution, Mr Peacock of Counsel for the applicant contended that the report and the GWP are deemed to constitute the High Court judgment pursuant to section 149 (4). It seems that Counsel’s view appears to be the accepted practice regarding the stand taken of the report of a Commission of Inquiry and a White Paper. I do not share that view, in so far as they relate to section 149 (4) of the Constitution. The provision is unambiguous and specific. The right of appeal is granted against an adverse finding in the report of the Commission of Inquiry. For that is the report deemed by the Constitution to be the High Court judgment. A GWP clearly is not a report of Commission of Inquiry but a document containing statements of Government policy on matters, in this case, flowing from report of Commission of Inquiry.

A deeming provision deems things to be what they are not and so in construing such provisions it is necessary to bear in mind the legislative intendment borne out by the words used. As indeed with any decision of the Court, there is bound to be a party feeling aggrieved by such a decision. A right to have recourse to another body to address that grievance is therefore necessary and the law makes provisions for it. The deeming provision of Section 149 (4) is in my view, intended to achieve this same purpose and no more, that is, to provide a right of appeal to this Court against an adverse finding by the Commission of Enquiry. Such a finding had been made following a hearing and evaluation of evidence by an independent body. It would be imprudent in my view, if the GWP could be deemed to be a deemed to be a High Court judgment even, if it is prepared from the report of the Commission of Inquiry, since a

GWP is basically a collation of Government's policy statements for the information of Parliament on what to be done to implement the findings and recommendations of the Commission of Inquiry. It therefore cannot be deemed to be a High Court judgment against which the right of appeal under section 149 (4) can be exercised. If that was intended, I feel certain the draftsman would have said so.

Adverse Finding Against the Applicant

For the applicant to invoke the jurisdiction of this Court, she must that there is an adverse finding against her in the report of the Commission of Inquiry. In her affidavit, in support of her application, the applicant suggested that the adverse comments about her property at 97 Regent Road, Hill Station, Freetown, were contained in the GWP and not in the report of the Commission of Inquiry ; as such falls outside of the terms of references of the Commission of Inquiry. While I appreciate her sentiment that the adverse comments about her property were contained in the GWP rather than in the Commission of Inquiry, I do not share the view that the applicant's property fell outside of the Commission of Inquiry's terms of reference which were wide enough to encompass any person's property in the Western Area. What do I say, however, is that having read through the report of the Commission of Inquiry, I am unable to find any mention of a complaint over the property at 97 Regent Road, Hill Station, Freetown, nor have I been able to find any reference to the applicant or her husband being called to be questioned before the Commission in respect of the said property. That, of course, is an issue which may well arise in the matter now before the High Court and I shall say no more on that here. What must be reiterated is that the "adverse finding", raised by the applicant, as being made against her, is found in the GWP rather than in the report of the Commission of Inquiry.

Whether Extension of time be Granted

Counsel for the applicant referred to the case of Botch way and Another V- Nassar and others (1946) 12 W.A.C.A. 23. That case, however, does not support the applicant's case. In that case, a right of appeal existed in the first place, but the appellant had failed to comply with the conditions of appeal within the time allowed. The West African Court of Appeal exercised its discretion to grant time to the appellant to fulfill the conditions of the appeal in order to secure substantive justice. The default in that case was no more than a technicality. That is not the case in the present application before us, where the applicant faces the hurdle of having to establish the existence of her right of appeal in the first place before she can proceed further.

Mr. Peacock further relied on the case of *The State v. Brima Daboh* (27 February 1979) Supreme Court of Sierra Leone, Misc.App. 1/1979 (unreported). In that case also, the right of appeal was not in question. The question for the Court was whether the default (an inadvertence on the part of the DPP by applying for leave to appeal to Supreme Court, instead of appealing directly to the Supreme Court, resulting in being out of time) could be cured in the exercise of the discretionary power of the Court. The extension of time was granted. The case before us in this application is, again, not the same as that case, for the same reason as I have stated above.

In support of his objection to the application, Mr. Roberts of Counsel for the respondent referred the Court to the case of *Mohamed Fofanah - V- Mohamed S. Turay* (4 March, 1988), Court of Appeal, Misc.App.40/1987 (Unreported) Where the Court stressed that if there is non-compliance of the rules of Court governing appeals, there can be no waiver, no indulgence and no enlargement of time. However as I pointed out with regard to the cases cited by Counsel for the applicant, the present case before the Court has to be brought within the ambit of Section 149 (4) of the Constitution before one can begin considering the question of non-compliance. The first hurdle has yet to be got over.

The right of appeal lies against an adverse finding in the report of the Commission of Inquiry (deemed to be High Court judgment), and not against statements contained in GWP. The 'adverse finding' sought to be challenged by the applicant is contained in the GWP which is outside the application of Section 149 (4) of the Constitution. No right of appeal flows against the contents of a GWP, as such no extension of time to appeal can be issued by this Court in this regard. In addition, no leave to file a notice of appeal can be issued from this Court either. Thus presently, there is nothing in this application that obliges this Court to exercise its power as sought by the applicant. If I may respectfully suggest, an appropriate proceedings in High Court may be necessary by way of judicial review. That is a matter for the parties.

The application before this Court, however, is misconceived and it is refused.

Murcia JA (Presiding):.....

Tejan-Jalloh JA: I concur.....

Doherty J: I concur