

CIV. APP. 45/2005

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

MOHAMED L. BANGURA - APPELLANT

AND

JOHN SAHR YAMBASU
MOHAMED AKA KOROMA

AND

ALL PEOPLES CONGRESS - RESPONDENTS
(APC)

CORAM:

Hon. Justice U.H. Tejan-Jalloh - JSC
Hon. Justice S. Koroma - JA
Hon. Justice S.A. Ademosu - JA

Hearing Date: 6th February, 2007

Ruling:

Advocates:

A.F. Serry-Kamal Esq., for the Appellant
Berthan Macaulay (Jnr.) Esq. for the 1st and 3rd Respondents
V.V.Thomas Esq., for the 2nd Respondent

RULING

Delivered this 3rd day of March, 2007.

TEJAN-JALLOH JSC: The issue before the Court for determination is whether the Court of Appeal has power to allow ground 7 of which is one of the amended grounds of Appeal. That ground reads:

"That the Learned Trial Judge acted on wrong principle of law when he refused in Volume 2 Page 399 to grant amendments sought by the

Plaintiff/Applicant in Paragraphs 4, 5, 9 of the endorsement of the Writ of Summons dated 11th March 2005".

At the commencement of the argument, Berthan Macaulay Esq, (Jnr.) Counsel for the 1st Respondent drew the Court's attention to Page 399 of the Record of Proceedings, where a ruling was given on ground 7. His contention is that it was an interlocutory matter for which an appeal can lie and according to him by leave only pursuant to Rule 10(1) of the Court of Appeal Rules – Public Notice No. 29 of 1985 as amended by Constitutional Instrument Act No. 1 of 2003. V.V. Thomas Esq. Counsel for the 3rd Respondent adopted the argument of Mr. Macaulay. Both Counsels are of the view that the interlocutory issue raised and determined cannot be a ground of appeal and can only be so when an applicant invoked sub-rule 1 of Rule 10 of the Court of Appeal Rules.

In reply, Serry-Kamal Esq., Counsel for the Appellant submitted that Rule 10 (1) was only one of several ways by which an Appellant can appeal against a ruling on an interlocutory issue and stressed that he is not precluded from raising the issue as decided on appeal because an appeal to the Court of Appeal is by way of re-hearing. Furthermore, he cited Rule 9 (6) which provides that the Court in deciding an appeal is not confined to the ground set forth by the Appellant, provided the Court does not rest its decision on any ground not set forth by the Appellant, unless the parties have had sufficient opportunity of contesting the case on that ground.

Ground 7 is an interlocutory issue, that is, an amendment which was sought and it was an interlocutory ruling in which an appeal could have been brought within 14 days as from the date of the ruling. The Appellant did not avail himself of that provision and decided to make it a ground of appeal in the substantive appeal itself. In such circumstances, Rule 9 (1) provides that all appeals shall be by way of rehearing. My understanding of the phrase is that the appeal is not a new or fresh trial, but a review or reconsidering of the trial or proceedings below

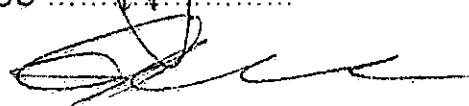
including the evidence adduced. Nothing precludes us to hear interlocutory issues.

This being the case, I hold that ground 7 can be argued and the objection is overruled.

Hon Justice U.H. Tejan-Jalloh JSC



Hon Justice: S. Korema JA.....



Hon Justice: S.A. Ademosu JA

