

CIV. APP 63/2008

IN THE SIERRA LEONE COURT OF APPEAL

BETWEEN:

MARTIN MICHAEL

- 3RD RESPONDENT/APPLICANT

AND

ALBERT GOMEZ

- 1ST RESPONDENT

AND

THE SHERIFF OF THE HIGH COURT- 2^N DEFENDANT/RESPONDENT

AND

SIERRA LEONE NATIONAL SHIPPING
CO. LTD

- APPELLANTS/APPLICANTS

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HON MRS JUSTICE S BASH-TAQI, JSC (PRESIDING)

HON MR JUSTICE P O HAMILTON, JSC

HON MRS JUSTICE A SHOWERS, J

Barristers

C F Margai, Esq. for the Respondents/Applicants

J B Jenkins-Johnston Esq. for the Appellants/Respondents

RULING DELIVERED ON THE DAY OF JUNE 2009

S.BASH-TAQI, JSC:

On the 30th day of January this Court granted a Stay of Execution, on terms, of the Judgment of the High Court, dated 10th November 2008 and all subsequent proceedings pending the hearing and determination of an appeal against the said judgment lodged by the Appellants/Respondents herein. In granting the Stay of Execution the Court of Appeal ordered as follows:

"The stay of Execution of the Judgment of D.B. Edwards, J dated 10th day of November 2008 and all subsequent proceedings pending the hearing and determination of the appeal is granted in the following terms:

1. That the applicant be restored to the position before the issue and execution of the writs of Fisa and Possession by the High Court with respect of the property situate and being at 2A and 4A Off Spur Road Wilberforce Freetown.

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2. That in view of the nature of this action there be a speedy hearing of the appeal and that the records be prepared by the Appeal Registry within Four (4) weeks from the date of this ruling.
 3. That the Applicants/Appellants pay the costs of this application agreed at Le 2, 500,000.00."

It is against this background that the Respondents/Applicants filed a motion on the 23rd day of March 2009 praying for the following orders:

1. "That this Hon. Court do clarify their Order dated 30th January 2009 granting a Stay of Execution of the Judgment of the Hon. Justice D. B. Edwards dated 10th November 2008 and all subsequent proceedings pending the hearing and determination of the appeal on terms therein stated as it relates to the costs awarded in the Judgment of Hon. Justice D. B. Edwards dated 10th November 2008.
2. Such further Orders to be made as the justice of the case may demand.
3. Costs in the cause".

The Motion is supported by the Affidavit of the 3rd Respondent/Applicant, sworn on the 23rd day of March 2009. There are attached to the said Affidavit three exhibits, namely, Ex. "RBK 1", the Order of the Court of Appeal of 30th January 2009; "RBK 2", the Respondents' taxed bill of costs in the High Court and Ex. "RBK3" an undertaking by the Solicitors for the 3rd Respondent dated 3rd March 2009, to refund the taxed costs should the appeal against the said Judgment succeed and a letter dated 3rd March 2009 written by C. F. Margai, Esq. of Counsel for the Applicants to the firm of Betts & Berewa Solicitors for the Appellants/Respondents demanding payment of the taxed costs..

On 30th March 2009 the firm of Jenkins-Johnston & Co filed a Notice of Change of Solicitors having been appointed by the Appellants/Respondents to act as Solicitors on their behalf in place of Betts & Berewa, the original Solicitors.

On 28th May 2009, when the application finally came before the Court after several adjournments, Mr. J. B. Jenkins-Johnston Johnston of Counsel for the Appellants/Respondents took a preliminary objection to the application being heard by the Court. He submitted that the application before us seeks a review of the Judgment/Order of 30th January 2009 exhibited as "RBK1" to the Affidavit in Support; that the orders sought in the Notice of Motion if granted would contravene Rule 33 of the Court of Appeal Rules PN No.29/1985 and for this reason he stressed that this Court cannot entertain the application; that such an exercise would amount to a review of its own decision/order of 30th January 2009. He further relies on Section 128 (3) of the Constitution of Sierra Leone, Act No. 6/1991 to emphasis his point. He stressed that by Rule 33 of the Court of Appeal Rules, this Court is bound by its own previous decisions/orders, and therefore it cannot be seen to review such previous decisions/Orders; that the invitation by Counsel for the 3rd Respondent for this Court to clarify the Order of 30th January 2009, is in fact an invitation for the Court to review its own order or decision, an exercise which is prohibited by Rule 33 of the Court of Appeal Rules and by Sec 128(3) of the 1991 Constitution of Sierra Leone. He asked us to dismiss the Motion with costs.

Mr. Margai of Counsel for the Applicant in his reply submitted that the application before the Court is misconceived and that Sec 128(3) of the Constitution has no relevance in the matter on the ground that the Court is not being asked to deviate from its previous decision of 30/01/09, but merely to clarify that decision. He submitted that what is before the Court is an application seeking clarification of a previous order of the Court. He pointed out that while Rule 33 prohibits the Court from reviewing its previous decision, it goes on to state the exception under which the Court can do this. He submitted that the Applicant is not questioning the correctness of the Ruling; he is merely seeking clarification as to whether the Stay of execution applied to the costs awarded to him and whether he was to be deprived of his costs.

Mr. Jenkins-Johnston replied that the words of the Order are quite clear and mean exactly what they say, therefore there is nothing for this Court to clarify or explained.

Rule 33 of the Court of Appeal Rules provides as follows:

“33. The Court shall not review any judgment once given and delivered by it except in accordance with the practice of the Court.”

And Section 128(3) of the Constitution Act No. 6 of 1991 states:

“Subject to the provisions of subsection (1) and (2) of section 122 of this Constitution, the Court of Appeal shall be bound by its own previous decisions and all Courts inferior to the Court of Appeal shall be bound to follow the decisions of the Court of Appeal on questions of law”.

From the quoted provisions above, the law is settled that the Court of Appeal cannot review its own judgments/decisions, ‘except in accordance with the practice of the Court’. Learned Counsel for the Applicant though relying on the exception to the Rule 33, remains silent as to what the practice of the Court is in this kind of situation.


According to Part 1- Preliminary Section of the Court of Appeal Rules 1985 –

“Judgment” includes a decree, order, sentence or decision of the Court below or any Court, Judge or Judicial Officer and includes an award.”

We have heard and considered what Counsel for the Appellant/Respondent had to say on his objection, and what Counsel for the Applicant/Respondent has argued in answer to the objection raised and also considered the provisions of Rule 33 of the Court of Appeal Rules, and have come to the conclusion that that the Ruling/Order of this Court dated 30th January 2009 is quite clear and needs no clarification. We agree with the submission of Learned Counsel for the Appellant/Respondent that this is an attempt by Counsel for the Applicant for this Court to review its previous order contrary to the provisions of Rule 33 of the Court of Appeal Rules.

We find ourselves unable to hear this application in the circumstances. The objection of Counsel for the Appellant/Respondent is upheld. The Applicant’s application is dismissed. We make no order as to costs

Before concluding, I wish to state that it is unfortunate that this matter is being prolonged unnecessarily by the participants. Since the order granting a speedy hearing of the appeal was made on 30th January 2009, I believe the substantive appeal would have been disposed of by now if both parties had only made some efforts to co-operate with each other. The present situation is very unsatisfactory and portrays Counsels' indifference to the interests of their clients.



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HON MRS JUSTICE S BASH-TAQI, JSC



I AGREE.....

HON MR. JUSTICE P. O HAMILTON, JSC

I AGREE.....

HON MRS JUSTICE A SHOWERS, J