

Misc. App. 4/2010

IN THE COURT OF APPEAL OF SIERRA LEONE

IN THE MATTER OF THE CONSTITUTION OF SIERRA LEONE SECTION 134 ACT NO.6 OF 1991
AND ORDER 52 OF THE HIGH COURT RULES CONSTITUTIONAL INSTRUMENT NO.8 OF 2007
AND OR 53 OF THE SUPREME COURT PRACTICE 1999

AND

IN THE MATTER OF THE INSPECTOR-GENERAL OF POLICE VS. CHANG YUNG-CHI AND 10
OTHERS HAVING BEING CONVICTED BY THE MAGISTRATE COURT NO.1 ON A THREE
COUNT CHARGE OF:- (1) UNLAWFUL ENTERING THE FISHING WATERS OF SIERRA LEONE
CONTRARY TO SECTION 2(1) OF THE FISHERY (MANAGEMENT AND DEVELOPMENT) ACT
2008. (2) UNLAWFULLY USING A FOREIGN FISHING VESSEL FOR THE PURPOSE OF FISHING
WITHIN THE FISHERY WATERS OF SIERRA LEONE CONTRARY TO SECTION 21(1) SUB-
SECTION 21(1)(6) OF THE FISHERY (MANAGEMENT AND DEVELOPMENT) ACT 2008 AND (3)
ILLEGALLY ENGAGING IN FISHING WITHIN THE FISHERY WATERS OF SIERRA LEONE
CONTRARY TO SECTION 21 SUB-SECTION II OF THE FISHERY (MANAGEMENT
DEVELOPMENT) ACT 2008.

AND

IN THE MATTER OF THE JUDGMENT OF THE MAGISTRATE COURT NO.1 PRESIDED OVER BY
HIS WORSHIP MAGISTRATE SETVEN CONTEH IN WHICH ALL 11 ACCUSED PERSONS WERE
FOUND GUILTY OF THE OFFENCES FOUNDED ON THEIR PLEA OF GUILT TO THE OFFENCES
AS CHARGED THE SAID JUDGMENT WAS DELIVERED ON THE 4TH OF SEPTEMBER, 2009
WITH A VARIATION OF THE FINES IMPOSED ON THE 9TH OF SEPTEMBER, 2009

AND

IN THE MATTER OF AN APPLICATION BY ORIGINATING NOTICE OF MOTION PURSUANT TO
SECTION 134 OF THE CONSTITUTION OF SIERRA LEONE ACT NO. 6 OF 1991 AND ORDER 52
OF THE HIGH COURT RULES CONSTITUTIONAL INSTRUMENT NO. 8 OF 2007

AND ORDER 53 OF THE SUPREME COURT PRACTICE 1999 FOR AN APPLICATION BY THE
APPLICANTS HEREIN ON NOTICE FOR AN ORDER OF CETIORARI AND MANDAMUS AND
ANY OTHER CONSEQUENTIAL ORDER(S) AND DIRECTIONS TO ISSUE AGAINST HIS
WORSHIP MAGISTRATE STEVEN CONTEH PRESIDING MAGISTRATE IN THE TRIAL OF THE
CASE OF INSPECTOR-GENERAL OF POLICE AGAINST CHANG YUNG CHI AND 10 OTHERS
AND THAT THE JUDGMENT AND SENTENCES FOLLOWING THEREUNDER RESPECTIVELY
DATED THE 4TH AND 9TH OF SEPTEMBER, 2009 TO BE REMOVED FROM THE SAID
MAGISTRATE COURT INTO THE HIGH COURT AND THEREUPON TO BE QUASHED ON THE
GROUNDS THAT THE TRIAL WAS A NULLITY AS THE CHARGES WERE UNKNOWN TO THE
LAWS OF SIERRA LEONE CONTRARY TO SECTION 23(7) OF THE CONSTITUTION OF SIERRA
LEONE ACT NO.6 OF 1991 AND THAT THE PROCEEDINGS WERE IN BREACH OF SECTION 53
OF THE CRIMINAL PROCEDURE ACT NO.32 OF 1965

BETWEEN:

CHANG YUNG CHI & 10 OTHERS

- APPLICANTS

AND

THE INSPECTOR-GENERAL OF POLICE

- RESPONDENT

CORAM:

HON. JUSTICE E.E. ROBERTS, J.A.

HON. JUSTICE S.A. ADEMOSU, J.A.

HON. JUSTICE A. SHOWERS, J.A.

JUDGMENT DELIVERED THIS 1st DAY OF July 2010
BY HON. JUSTICE E.E. ROBERTS, J.A.

The Appellants were jointly charged with several counts under the Fishery (Management and Development) Act 2008. On the 26th August 2009 in the Magistrate Court, the charges were read to the appellants who all pleaded not guilty and were duly remanded in custody, their application for bail having been refused. On the 4th of September 2009 after the charges were re-read to them the Appellants pleaded guilty to all the charges and were accordingly sentenced to fines as stated in pages 17-18 of the Records.

On the 9th of September 2009 the Appellants were again brought before the Magistrate Court to "correct certain administrative irregularities". These proceedings ended with the Magistrate varying the sentences already handed down and further ordering confiscation of the boat.

By letter dated 9th October 2009 addressed to the Chief Justice and written on behalf of the Appellants, an application was made pursuant to Cap. 17 of the Laws of Sierra Leone 1960 for summary review of the magistrate's action/decision which said application was denied.

The Appellants then filed an Originating Notice of Motion dated 17th November 2009 in the High court seeking and order of Certiorari to quash the varied sentences of the Appellants by the Magistrate. The Hon Justice N.C. Browne- Marke J.A by ruling dated 8th January 2010 refused the application for certiorari. The Appellants sought leave of the High court to appeal against the decision of 8th January 2010 and by order dated 11th February 2010 leave to appeal was refused. The Appellants then sought and obtained leave to appeal from this Court by order dated 4th March 2010. The appellants then filed this appeal as amended. Counsel for the Appellants has also relied on synopsis filed on 3rd May 2010.

Counsel for the Respondent did not file any synopsis on behalf of the State Respondent but rather candidly and gracefully conceded to the appeal.

It is my view that the appeal has merit. The Learned trial Judge erred in stating or suggesting that judicial review is a remedy of last resort or that the Appellants have the remedy of appeal open to them and so would not be granted judicial review. The learned judge in my view conceded this error in his ruling of 1st February 2010 at page 97 of the Records. For the above reasons, the appeal therefore succeeds.

The Appellants however urges the court not to remit the application to the High Court but to deal with same pursuant to Rule 32 of the Court of Appeal Rules 1985. Counsel for the Appellants conceded that Rule 32 is under part 2 of the Court of Appeal Rules which is headed Civil Appeals. I am inclined to agree with counsel that this rule applies to criminal appeals. I am fortified in the view by the provisions of section 129 (3) of the Constitution of Sierra Leone 1991 which states.

“For the purpose of hearing and determining any appeal within its jurisdiction and the amendment, execution or the enforcement of any judgment or order made on any such appeal and for the purposes of any other authority expressly or by necessary implication given to the Court of Appeal by the Constitution or any other law, the Court of Appeal shall have all the powers, authority and jurisdiction vested in the Court from which the Appeal is brought.”

It is my view therefore that the combined effect of Rule 32 of the Court of Appeal Rules and section 129 (3) of the Constitution is to vest this court with jurisdiction and authority to deal with this appeal and to grant such orders as in our view the High Court ought or could to have made. It is also my view that there is sufficient material before this court to do so. All the documents, the record of proceedings (including the judges notes) in the High court are contained in the Records now before us. Furthermore I have read the Appellants application for judicial review dated 17th November, 2009 particularly the “Statement accompanying Applicant’s case”. See page 26 of Records. I have noted the proceedings before the magistrate who after sentencing the Appellants by imposing fines which said fine

were paid, proceeded on a subsequent date to entertained an application (by motion dated 8th September 2009) for the review of the fines and granting such review as well as the making further order(s). See pages 17 – 20 of Records.

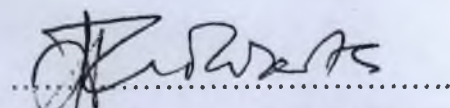
I view the said application by the D.P.P. (contained in motion dated 8th September 2009 as most unusual. And rather curiously, I cannot find any authority in the Record of proceedings cited or relied on in support of the said application.

It is in my view most unfortunate that such an application was entertained by the Magistrate let alone granted.

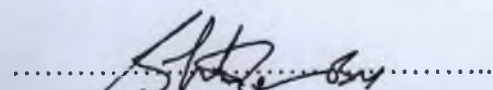
This court has learnt that the fine imposed by the Magistrate in his sentence on the same had already been paid by the Appellants and to later impose a higher revised fine is to subject the appellants to double jeopardy. This is not only unfair but also unsupportable in law. After imposing the first fines the magistrate was dearly functus officio in so far as sentencing is concerned.

The appellants having paid the first fines imposed by the Magistrate, it is therefore ordered that:

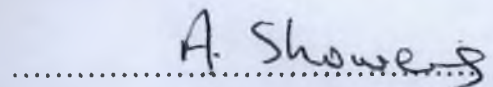
1. The order of the Magistrate made on the 9th September 2009 varying or revising the fines already imposed is hereby quashed.
2. The Appellants shall be released from detention or custody immediately.
3. The boat belonging to the Appellants be released forthwith.
4. That all travel and other documents taken from the Appellants be returned to them immediately.



HON. JUSTICE E.E. ROBERTS J.A.



HON. JUSTICE S.A. ADEMOSU J.A.



HON. JUSTICE A. SHOWERS J.A.

Misc. App. 7/2010

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:-

CHRISTIAN OGOO - 1ST APPLICANT
DATATEL NETWORK GSM (SL)LTD - 2ND APPLICANT

AND

HUAWEI TECHNOLOGIES LTD - 1ST RESPONDENT
CELLCOM TELECOMMUNICATIONS (SL) LTD - 2ND RESPONDENT

CORAM:

Hon. Mr. Justice S.A. Ademosu - JA
Hon. Mrs. Justice A. Showers - JA
Hon. Mrs. Justice V.M. Solomon - JA

ADVOCATES:

E.E.C. shears-Moses Esq. for the Applicants
C. Macauley Esq. for the Respondents

RULING DELIVERED THIS 15th DAY OF July 2010

ADEMOSU J.A.

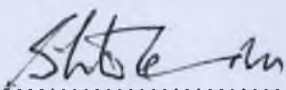
By a Notice of Motion dated 10th June 2010 the applicants applied for the following orders:

1. That the 1st and 2nd Applicant be granted leave to appeal from the Ruling of the Honourable Justice N.C. Browne-Marke J.A. dated the 10th day of November 2009.
2. That the costs awarded by Order dated the 28th day of May 2009 be stayed pending the hearing and determination of this application.
3. Any further or other relief.
4. Costs.

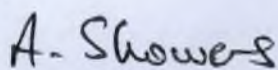
The application is supported by 25, paragraph affidavit and 15 exhibits and is opposed by the respondent who filed an affidavit in opposition with exhibits attached. I will first of all dispose of the respondent's contention which dwells principally on issue of jurisdiction in this jurisdiction. Mr Macauley in opposing this application cited a good number of cases both local and foreign but in my view though they appear to be formidable but they can only be useful in consideration of the appeal on its merits. For instance, the case of A.P. Muller V. Hadson

Taylor Civ. App.10/88 was an appeal from my decision of November, 6 1987. It was a ruling on exclusive jurisdiction clause in a Bill of Lading. That was a shipping matter. All the other issues raised upon which authorities were cited are ones that the proper forum to consider them is the Court of Appeal and not in an application of this nature.

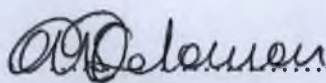
Turning to the application before this court. Our main concern here is whether the applicants have discharged the onus of showing prima facie good grounds of appeal. In moving this Court Mr. Shears-Moses drew our attention to several salient paragraphs in the supporting affidavit as well as in the exhibits attached which are self-explanatory. In considering them we did not lose sight of the fact that the applicants are strictly maintaining that they have a jurisdictional issue to be determined on appeal. Bearing also in mind that the applicants are exercising their Constitutional right we feel that they should not be denied the right. In the circumstances, we grant the leave sought as prayed. Applicants to file and serve their appeal within seven (7) days from the date hereof.



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Hon. Mr. Justice S.A. Ademosu J.A.



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Hon. Mrs. Justice A. Showers J.A.



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Hon. Mrs. Justice V.M. Solomon J.A.