

SC CIV APP NO.3/2010

IN THE SUPREME COURT OF SIERRA LEONE

NOTICE OF CIVIL APPEAL

BETWEEN:

ALHASSAN PAUL KARGBO - AN INTERESTED
PARTY APPELLANT

AND

SANNOH VICTOR MUSTAPHA - APPELLANT

AND

BRIMA JALLOH - RESPONDENT

CORAM:

HON. JUSTICE P.O. HAMILTON - JSC

HON. JUSTICE V.A.D. WRIGHT - JSC

HON. JUSTICE M.E.T. THOMPSON - JSC

A.F. Serry-Kamal Esq. and S.M. Sesay for Appellant/Applicant

D.G. Thompson Esq. for Respondent

Ruling Delivered on the 6th Day of October, 2011

HON. JUSTICE P.O. HAMILTON - JSC

This is an application on behalf of the Applicant for an Order that this Honourable Court do grant the Appellant leave to file the Appellant's case out of time and an enlargement of time as prescribed by Rule 41(b) and (c) of the *Supreme Court Rules, 1982* (Statutory Instruments No.1 of 1992).

This application is supported by the affidavit of Abdul Franklyn Serry-Kamal sworn to on 7th February 2011 to which is attached *Exh. ASFK1* a notice that the records of Appeal was ready for collection, *Exh. ASFK2* a notice that the Appeal is fixed for mentioning, *Exh. ASFK3* a Statement of the Appellant's case.

There was filed a further affidavit in support sworn to on 3rd March, 2011 to which was attached *Exhs. ASFK4* a certificate of the Order of the Court of Appeal which I shall quote in full: "The notice dated the 3rd day of November, 2009 coming up for hearing on the 9th day of February, 2010 before the Hon. Justice N.C. Browne-Marke Justice of the Appeal (Presiding), the Hon. Justice E.E. Roberts Justice of the Appeal, the Hon. Justice A. Showers Justice of Appeal, in the presence of S.M. Sesay Esq. Counsel for the Interested Party/Applicant and D.G. Thompson Esq. of Counsel for the Appellant/Respondent.

I HEREBY CERTIFY THAT the following Order was made –

"Appellant to file Appeal in the Supreme Court in view of Section 123 of the 1991 Constitution and so as not to prejudice his interest. Ruling Reserved". (Emphasis mine)

Exh. ASFK5 is a notice of appeal dated 22nd February, 2011.

There was also filed a supplemental affidavit sworn to on 12th April, 2011 by Abdul Franklyn Serry-Kamal on behalf of the Applicant/Interested Party to which was attached the following Exhibits – *Exh. ASFK6, ASFK7, ASFK8, ASFK9, ASFK10¹⁻⁷⁰ and ASFK11* which are the Writ of Summons, the

judgment delivered on 25th January, 2005, a Conveyance from Sannoh Vandy Mustapha to Alhassan Paul Kargbo, a Judgment of the Court of Appeal delivered on 7th July, 2009, special leave to appeal to the Supreme Court filed in the Court of Appeal and an Order allowing an appeal pursuant to *Section 123 of the Constitution 1991*.

There is filed a further supplemental affidavit sworn to by Abdul Franklyn Serry-Kamal on 9th May 2011. The averment in this affidavit I will quote in full:

1. *"I am a Senior Partner in the Law Firm Serry Kamal and Co. Solicitors for the Respondent and the Interested Party and I am authorized to make this affidavit on their behalf.*
2. *The Interested Party filed a motion dated 10th August, 2009 which is Exh. APL6¹⁻¹⁰ to the affidavit of Alhassan Paul Kargbo sworn to on the 3rd day of November, 2009 the same is also part of Exh. ASFK10¹⁻⁷⁰ in my affidavit sworn to on the 12th day of April, 2011.*
3. *The aforesaid application was heard on the 20th October, 2009 the Court gave a ruling dismissing our client's application with costs. A true copy of a certified true copy of the Order of the Court is now produced and shown to me marked "ASFK12". As a result of that order another application was filed in the same Court out of caution for special leave to appeal to the Supreme Court against the Court's decision. The said Court on the 9th February, 2010 ordered the Applicant to file an appeal to the Supreme Court in view of Section*

123 of the 1991 Constitution so as not to prejudice the applicants interests. The aforesaid order is Exh. ASFK11 to my affidavit sworn to on the 12th day of April 2011.

4. In view of the provisions of Section 123(1)(a) of the 1991 the above application for special leave was wholly unnecessary as an appeal in any civil cause or matter to the Supreme Court from an order of the Court of Appeal is as of right".
5. The appeal was duly filed in the Supreme Court but owing to pressure of work and some lapses in my chambers we failed to file the case for the appellant on time. In paragraphs 3 and 4 of my affidavit in support of my application dated 7th February, 2011, I have exhibited the case for the appellant that we intend to file which it is submitted is meritorious. The Court of Appeal failed to consider the powers which Rules 31 and 32 of the Court of Appeal Rules 1985 gives it to act as if it were the Court of first instance. Order 18 Rule 6(2)(b) of the High Court Rules, 2007 any stage of the proceedings empowers the High Court either of its own motion or on application to order any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the case or matter may be effectually and completely determined and adjudicated upon to be joined in the said proceedings".

Paragraph 2 of this said affidavit makes interesting reading by stating thus: "The Interested Party....." Does it mean that the applicant is not a party but an interested party? This will be dealt with later on in this ruling.

There is filed an affidavit in opposition by David Gustavus Thompson sworn to on 17th February, 2011 and paragraph 4 of the said affidavit in opposition states:

4: *"That I have seen the supporting affidavit sworn to by Abdul Franklyn Serry-Kamal on the 7th day of February, 2011. That paragraph four (4) of the said Affidavit state that the Appellant's case discloses very serious matters of Law, with respect Alhassan Paul Kargbo is an interested party who is applying to be made a party in the matter as such could not be properly regarded as an Appellant as he has never been a party to the action both in the High Court and in the Court of Appeal of Sierra Leone and as such could not have a case that could disclose very serious matters and there is no provision in the Court of Appeal Rules 1985 (Public Notice No.29 of 1985) that allows an interested party who is not a party to the action to be made a party at the Court of Appeal after Judgment has been given".*

There is also filed an Affidavit in reply to the supplemental affidavit of Abdul Franklyn Serry-Kamal sworn to on 9th May, 2011 by David Gustavus Thompson sworn to on 19th May, 2011 in which paragraphs 2, 3 and 4 states:

2: *"That I have seen the supplemental Affidavit sworn to by Abdul Franklyn Serry-Kamal and filed herein paragraph two (2) of the said affidavit states "the interested party filed a motion dated 10th August. 2009 which is exhibit APL6¹⁻¹⁰ to the affidavit of Alhassan paul Kargbo sworn on the 3rd day of November, 2009 Exhibit ASFK10¹⁻⁷⁰ in my Affidavit sworn to on the 12th day of April, 2011".*

3: "Paragraph three (3) states "the aforesaid application was heard in the Court of Appeal and on the 20th October, 2009 the Court gave ruling dismissing our client's application with cost this is not correct the Order of the Court of Appeal dated 20th October, 2009 dismissing the application with costs have no bearing to the motion paper dated 10th August, 2009".

4: "The said Order dated 20th October 2009 is a direct consequence".

At this stage I need refer to *Exh. ASFK4* attached to the further affidavit sworn to on 3rd March, 2001 where in the attached affidavit was "Ruling Reserved" and now ask what ruling is reserved? The answer is clearly in paragraph 9 and 10 of the supplemental affidavit of Abdul Franklyn Serry-Kamal sworn to on 12th April, 2011 and it reads:

Paragraph 9: "On the 9th February, 2010 the Court of Appeal made an order allowing our client the right to appeal in view of Section 123 of our Constitution 1991. A copy of the said order is now produced and shown to me marked Exhibit ASFK 11".

Paragraph 10 : "After the previous hearing of this Honourable Court I went to see the Presiding Judge Hon. Mr. Justice N.C. Browne-marke to explain the court's Order to me. According to his explanation the Court deferred a pronouncement of a ruling after the Supreme Court's ruling in our appeal on our appeal to it. As at yet the Court of Appeal has not given a final ruling on our application".
(Emphasis mine)

In my opinion from the above quoted averments in paragraphs 8 and 9 the ruling is still reserved. Therefore to what appeal is this present application pursuant to Rule 41(b) and (c) relates?

This application is made pursuant to *Rule 41(b) and (c) of the Supreme Court Rules 1982 (Public Notice No. 1 of 1982)* it provides:

Rule 41(b): "The appellant shall, within one month of being notified that the record is ready in accordance with Rule 24, file with the Registrar of the Supreme Court his case based on the grounds of appeal as set out in the notice of appeal".

Rule 41(c): "The respondent shall within one month of the receipt of the appellant's case file with the Registrar of the Supreme Court his case provided that the Supreme Court may enlarge the time by Sub-rule (b) and (c) as circumstances may require".

It is better to point out here that for an application for enlargement of time to succeed there must be very good and substantial reasons for the failure of the appellant "not an interested party/appellant" to file his case within the stipulated time. (*Emphasis mine*).

In this application the Appellant is stated "An Interested Party/Appellant" and the notice of motion is signed as "Solicitor for the Appellant". However, the notice of appeal (*Exh. ASFK5*) is signed "Serry-Kamal & Co., Solicitor for the Interested Party/Appellant". Can an "Interested Party" be an Appellant? I am bold to answer in the negative as an interested party is not

a party and an interested party cannot be an Appellant.

In *Exh. ASFK5* it is therein stated:

"4 The Grounds of Appeal are:-

(1) The Court of Appeal wrongly exercise its discretion in refusing the Interested Party/Appellant's application to be joined as an appellant in the appeal".

(2) "The Court of Appeal failed to exercise its discretion in refusing the Interested Party/Appellant's appeal to be joined as an appellant".

There is no provision within our rules for an "Interested Party/Appellant". This is in contrast to the situation in Nigeria wherein it is provided in the *Constitution of the Federal Republic of Nigeria in Section 243* in part:

"Any right of appeal to the Court of Appeal from the decision of the Federal High Court of a High Court Conferred by this Constitution shall be (a) exercised in the case of Civil proceedings at the instance of a party thereto or with the leave of the Federal High Court of the Court of Appeal at the instance of any other person having an interest in the matter....." (Emphasis mine)

Even the above quoted Section which is contained in the Nigerian Constitution which is the Supreme Law has certain limitations and as Niki Tobi JSC said in the case of *Enyibros Processing Co. Ltd. V. Nigerian Deposit Insurance Corporation* (2007) 3 S.C.N.J. 250 at 275:

*"By this section, a party to Civil Proceedings need not seek leave to appeal, if he appeals within time. A person having an interest in the matter must seek leave of the Federal High Court, the High Court of a State or the Court of Appeal to do so. The test to determine a person interested is whether the person could have been joined as a party to the suit at its initial stage and no more. See *Ojuku v. Military Government of Lagos State* (1985) N.W.L.R. (Pt.10) 806 (Emphasis mine)*

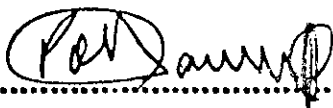
Considering the situation as it is even in Nigeria where there is a Constitutional provision for "a person having an interest" or "an interested party" to be made a party even on appeal to the Court of Appeal it is even not as of right but with leave of the Federal High Court, a State's High Court or the Court of Appeal and as Niki Tobi JSC aptly puts it "at the initial stage of the proceedings".

There is no such provision within our *Constitution of 1991* (Act No.6 of 1991) nor even in our various Rules of Court.

In my humble opinion therefore "An Interested Party/Appellant" is not a party nor an Appellant to an action. An application made pursuant to *Rule 41(b) and (c) of the Supreme Court Rules 1982* (Public Notice No.1 of 1982) is at the discretion of the Court. Therefore I hold that "An Interested Party/Appellant" is not a party nor an Appellant therefore the use of *Rule 41(b) and (c) of the Supreme Court Rules 1982* in this application is to create a lee way by which the "Interested Party/Appellant" can become a

Party/Appellant on appeal to the Supreme Court. This in my humble opinion is totally unacceptable.

In conclusion therefore I hold that there is no merit in this application and would accordingly dismiss it with cost assessed as at Le750,000/00.



HON. JUSTICE P.O. HAMILTON – JSC

I AGREE: 

HON. JUSTICE V.A.D. WRIGHT – JSC

I AGREE: 

HON. JUSTICE M.E. TOLLA THOMAPSON- JSC

