CIV. APP. 10/2011

IN THE [redacted] COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

PARAMOUNT CHIEF MASAKAMA
KANAMAKA III - APPELLANT/RESPONDENT

AND

AMADU SANKOH - RESPONDENT/APPLICANT

CORAM:

HON. MR. JUSTICE P.O. HAMILTON, JSC

HON. Mrs. JUSTICE A. SHOWERS J.A

HON. Mrs. JUSTICE V.M. SOLOMON J.A

Counsel:-

N.D. TEJAN-COLE Esq. for the Apellant

A.F. SERRY-KAMAL Esq. for the Respondent

RULING DELIVERED THIS 7th DAY OF August 2012 BY HON. MRS JUSTICE V.M. SOLOMON J.A.

RULING

This application is by Motion Paper dated 15th August 2011 in which the Respondent/Applicant herein is seeking the following orders to wit:-

1. That the Honourable Justice N.C. Browne-Marke Justice of Appeal and the Honourable Justice M.E.T. Thompson Justice of the Supreme Court recuse themselves from hearing of the Appeal intitutled.

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P.C. Masakama Kamamanka III
(AKA Ibrahim Sankoh) - Appellant

And

Amadu Sankoh - Respondent

(2) Alternatively, that the aforesaid Learned Appellant Justices disqualify themselves from being members of the panel of justices that will hear this appeal on the grounds that:

(a) The said justices are so closely associated with Mr. N.D. Tejan Cole, Counsel for the Appellant that the Applicant fears that that degree of impartiality required of a presiding justice will not be discharged by them.

(b) Further, because of the very close association between the said justices and the Appellant's said Counsel justice may not manifestly be seen to be done in this case if they were to be members of the panel that will hear this Appeal.

© The presence of their Lordships in this panel will be in violation of the "Code of Conduct for Judicial Officers of the Republic of Sierra Leone"

This application is supported by two affidavits, one deposed to by the Applicant, the other by his Counsel. There is an affidavit in opposition deposed to by Counsel for the Respondent.

The Applicant herein had filed a Motion paper dated 21st June 2011 in which he sought the same orders herein and to which his application was dismissed by a ruling delivered by Hon. Mrs. Justice A. Showers J. A. on 19th July 2011. He has now brought this present application before the full panel of three judges which he has the right to by virtue of Section 130(b) of the Constitution of Sierra Leone, Act No. 6. of 1991 (hereinafter called "The Constitution").

Mr. Serry Kamal's contention was that his client will not get a fair hearing because of the intimacy between the two Justices and Counsel for the Respondent. He relied on the authorities of the case of Pinochet No.2 and Scottish Ministers V Davidson. He submitted his client's rights to a fair hearing will be compromised if these two justices continue to constitute the panel of three judges in this appeal.

Mr. N.D. Tejan-Cole on the other hand relied on the ruling of Hon. Justice A. Showers J. A. dated 19th July 2011. He submitted that the question of bias ought to be demonstrated. He further submitted that he has a right to assemble as provided by Section 28 of the Constitution.

The present application is based on affidavit evidence. Mr. Serry-Kamal's contention is that if these two justices sit on the panel in the Court of Appeal his client will not get a fair hearing because the Learned Justices have a close relationship with Mr. N. D. Tejan-Cole Counsel for the Respondents. The latter on the other hand has by his affidavit in opposition relied on the Judgment of 19th July 2011 as he submitted, this application has not raised any new issues. In the instant case the objection to the Learned Justices being members on the panel in this Appeal is one of "bias" because of their cordial relationship with Counsel for the Respondent. There is no evidence before this Court to support the conduct of the Justices complained off apart from their close cordial relationship with Counsel. There must be cogent evidence from the Applicant to support his allegations of bias. The test is no longer an objective test, that is, what a reasonable man would think but the likelihood of bias must be proved. I refer to authority of Adzaku V Galenku (1974) 1 G. L.R. page 198 per Sarkodee J he stated thus:

> "I have set out the sequence of events leading to the allegation of bias in some detail because I think it is important that such an allegation when made must be substantiated particularly, when the allegations of facts are challenged as in the instant case. They ought therefore to be proved to have foundation. That is to say, in order to disqualify the Magistrate and to invalidate his decision the allegation must be supported by evidence. To hold otherwise will be enable a party by objections to choose his own judge; a situation which will drive a wedge into the fabric of our whole judicial system. A mere suspicion of bias is not enough. *The law on disqualification on the ground of bias recognises not only actual bias but also a likelihood of bias, and that interest, other than the interest of a direct pecuniary or proprietory nature, which gives rise to a real likelihood of bias will disqualify a Magistrate."* (Emphasis added).

This view was expressed in the Irish case of R. V. Justices of County Cork (1910) 2 IR. Page 271 per Lord O' Brien C.J he said:

> "By "bias" I understand a real likelihood of an operative prejudice, whether conscious or unconscious. There must in my opinion *be reasonable evidence to satisfy us that there was a real likelihood of bias. I do not think that the mere vague suspicions of whimsical, capricious and unreasonable people should be standard to regulate our action here.* It might be a different matter if suspicion rested on reasonable grounds – was reasonable generated – *but certainly mere flimsy, elusive, morbid suspicions should not be permitted to form a ground of decision."* (Emphasis added).

What then is prejudice? Prejudice has been described as an opinion or judgment formed before hand without due examination based on considerations other than on merit. It is thus to be seen that, the rule against bias is not only to prevent the distorting influence of actual bias but also and more importantly to preserve and protect the integrity of the decision making process. This can only be achieved if the decision maker is insulated against the occurrence of circumstances that suggest the existence or appearance of bias, i.e. the operation of prejudice.

In the instant case, save for the cordial relationship that exist between the Justices and Counsel there is no evidence of bias or likelihood of bias on the part of the Justices. The suspicions of the applicant are flimsy and test used of bias is not objective but subjective. This Court is not concerned about what a reasonable man's standard of bias, but whether there is actual or a likelihood of bias. This view is substantiated in case of R. V. Barnsley Licensing Justices, Ex Parte Barnsley and District Licensed Victuallers' Association (1960) 2 Q.B. page 167 at page 187 per Devlin L.J. (as he then was):

> "But in my judgment, it is not the test. We have not to inquire what impression might be left on the minds of the present Applicant's or on the minds of the public generally. *We have to satisfy ourselves that there was a real likelihood of bias – not merely satisfy ourselves that there was the sort of impression that might reasonably* get abroad". (Emphasis added).

This case establishes the principle of whether the reasonable man conceives of the allegation to be bias or not, and also what the attitude of the courts is of the allegation, this will normally be based on the impression the courts have formed of the circumstances surrounding the allegations of bias. Quite often, this will be based on a case by case analysis. Mr. Serry-Kamal relied on the Code of Conduct for Judicial Officers and exhibited said code in his affidavit in support. I adopt all the arguments of Hon. Justice A. Showers J. A. in her ruling at pages 7-8 and do not wish to elaborate further.

Counsel also relied on a Scottish authority Scottish Ministers V Davidson judgment of Lord Bingham of Cornhill. Mr. Tejan Cole on other hand submitted that Scottish Law is not applicable in Sierra Leone as it does not form part of our Laws. The Laws of Sierra Leone or may I say, sources of Law is stipulated in Section 170 of the Constitution in which no reference is made of Scottish Law. I also refer to Section 74 of the Court's Act, Act No. 31 of 1965 and it reads thus:

> "74. Subject to the provisions of the Constitution and any other enactment, the Common law, the doctrines of equity, and the statutes of general application in force in *England* on the 1st day of January 1880, shall be in force in Sierra Leone." (Emphasis added).

This provision is clear and unequivocal and does not include Scottish Law. Therefore the case referred to supra cannot be used as precedent in this Court.

In the premises therefore, the Applicant has not established bias or a likelihood of bias by the Learned Justices named in the Motion paper.

We hereby order as follows:-

1. The Motion Paper dated 15th August 2011 is hereby dismissed

2. Costs in the cause.

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HON. JUSTICE V.M. SOLOMON J.A.

I agree .....

HON. JUSTICE P.O. HAMILTON JSC.

I agree .....

HON. JUSTICE A. SHOWERS J. A.