

CR. APP 1/2012

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

IBRAHIM BAH - APPELLANT

AND

THE STATE - RESPONDENT

CORAM:

THE HON. MR JUSTICE N C BROWNE-MARKE, JUSTICE OF APPEAL

THE HON. MRS JUSTICE A SHOWERS, JUSTICE OF APPEAL

THE HON. MRS JUSTICE N MATTURI-JONES, JUSTICE OF APPEAL

COUNSEL:

E E C SHEARS-MOSES ESQ for the Appellant

S A BAH ESQ Ag DPP for the Respondent

JUDGMENT DELIVERED THE 7TH DAY OF FEBRUARY, 2012.

1. The Appellant Ibrahim Bah, has in this Application dated 13 January, 2012 applied to this Court for Bail pending appeal. On 5 January, 2012 he was convicted of the offence of Receiving Stolen Goods, contrary to Section 33(1) of the Larceny Act, 1916 and sentenced to a term of imprisonment of 5 years, without the alternative of a fine. He is now serving his sentence at Central Prison, Pademba Road, Freetown. The Judgment was written by the Trial Judge, The Hon. Mr Justice S A Ademosu, now retired, but delivered by The Hon Mr Justice Katutsi in the Freetown High Court. The Appellant is also asking for any further or other Orders, and surprisingly, that the Costs of the Application, be Costs in the Cause. There is no Cause in existence, and, in any event, Costs are not usually awarded in an Application in a criminal matter.
2. The Application is supported by the affidavit of Mr Shears-Moses deposed and sworn to on 13 January, 2012. Exhibited thereto are, firstly, EECSM1 which is a copy of the Indictment on which the Appellant was convicted. In Count III of that Indictment, the Appellant is charged with receiving various quantities of cosmetics, the property of Yusufu Sow, knowing the same to have been stolen. Count I sets out in extenso, the various goods and, their respective value, stolen from the store of Yusufu

Sow.EECSM2 is a copy of the Judgment of the ADEMOSU,JA which was actually delivered by KATUTSI,J as ADEMOSU,JA had retired during the course of the last year, and is now the Chairman of the Political Parties Registration Commission. In that judgment, ADEMOSU,JA gave the reasons on pages 30-32 thereof, for believing that the Appellant was guilty of the offence with which he is charged. EECSM3 is a copy of the Notice of Appeal. It is dated 9 January,2012. The grounds of appeal relate principally, to the identity of the goods stolen, and whether, the prosecution succeeded in proving that the Complainants were the sole importers of these goods. The Appellant, of course, has the right to add further grounds of appeal before the appeal comes up for hearing.

3. To turn to the matters deposed to by Mr Shears-Moses in his affidavit, he deposes that the offence in respect of which the Appellant was convicted is one for which bail can be granted; that the Appellant is a citizen of Sierra Leone, and also a businessman with a family of which he is the sole breadwinner. He deposes further that the Appellant's business and family will continue to suffer hardship and ~~hardship~~ as a result of the Appellant's conviction and sentence. More controversially, Mr Shears-Moses deposes that *"..admitting the Applicant to Bail will make him more useful for conducting his case in the supply of information and material."* I say more controversially, because, an appeal is not a trial. All the evidence is already in; and the Appellant was convicted by the Trial Judge on the basis of the evidence led. As I pointed out to Mr Shears-Moses during the course of argument, an appeal is circumscribed by the grounds of appeal. He was Counsel for the Appellant in the Court below, and he must have received adequate and concise instructions from the Appellant in order to conduct his defence. If he had not, then he could not have exercised the due diligence and skill expected of Counsel at the Bar. The volume of exhibits tendered at the trial, should not, in my opinion, affect his handling of this appeal.
4. Mr Shears-Moses deposes further, that if admitted to Bail, the Appellant has reliable sureties who will ensure that he attends Court whenever needed. That, I am afraid, is a consideration which should weigh with the Court of first instance, not with an appellate tribunal. The appeal, for all intents and purposes, is being handled by Mr Shears-Moses himself, or, as appears on the back of exhibit EECSM3, the Notice of Appeal, the firm

will

of Shears-Moses & Co. The Appellant's presence is not required, unless he wishes himself to be present in Court during the hearing of the appeal. If he is incarcerated, he would be brought to Court by Prison Officers. The manner in which appeals are heard by this Court since 2004 means that, unless there is a delay on the part of Counsel on both sides, or a member of the tribunal is absent, an appeal should only be heard on two days: the first day, for the tribunal to give directions for the filing of synopsis by either side; and, on the second day, for the oral hearing during which, Counsel on either side may add to their written submissions. That the Appellant never violated his bail conditions during the course of the trial in the Court below, is of no moment. Those bail conditions are now spent. An accused's person's conduct before he is convicted does not necessarily remain the same after he has been convicted. Before conviction, he may be looking forward, hopefully, to an acquittal, and may see no reason to jump bail. After conviction and sentence, and after spending some time behind bars, he may look at things in a different light.

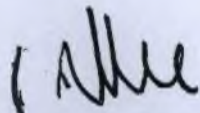
5. Mr Shears-Moses also deposes that the Appellant's appeal has a "*high degree of certainty to be successful*." This viewpoint, is entirely subjective, and is not really a requirement of the Law, though this Court would normally take into consideration the strength of the grounds of appeal. Section 67(2) of the Courts' Act, 1965 which governs this Application, provides that: "*The Court of Appeal, or the Court before whom he was convicted may, if it seems fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.*" The Appellant has not applied to the Court before which he was convicted, for Bail, but has come directly to this Court. He is entitled to do this, as applications for bail, are not the same as applications for stay of execution of judgments in civil appeals. In civil cases, the Application must be made to the Court below, and upon refusal, it could be made to this Court. To help this Court determine whether '*it seems fit*' to grant an appellant bail, this Court would look, as I have stated above, at the strength of the grounds of appeal, and the likelihood that the Appellant would have served a substantial part of his sentence before his appeal has been heard. This Court should not overlook the possibility that if an appellant is released on bail pending appeal, and his appeal is eventually dismissed, he would have to be returned to prison to complete his

sentence. Such an eventuality would probably have a much more damaging, psychological and emotional effect on an appellant and his family. Also, the fact that an appellant has remained in custody pending his appeal, might well induce or incline this Court, in the event that it dismisses his appeal, to exercise mercy, and reduce such an appellant's sentence.

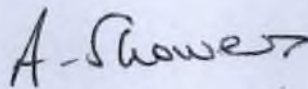
6. As regards the issue of whether the Appellant would have served a substantial portion of his sentence before his appeal ~~and~~ determined, Mr Shears-Moses, has said very little. This issue, was however dealt with by Mr Bah in his answer to the Appellant's Application, during which he cited the old WACA case of R v TUWANSHE which states the principle applicable in applications of this nature. As I have stated above, the manner in which appeals have been dealt with by this Court, since at least 2004 indicate that it is unlikely that any appellant in a criminal appeal, and who has been sentenced to a term of imprisonment without the alternative of a fine, would have spent a substantial portion of his sentence before his appeal is heard. During the course of argument, I cited the example of the case of HALLORAN v STATE in which I was Counsel for the Appellant. Halloran was convicted by ADEMOSU, JA in February, 2005 and sentenced to a term of 2 years imprisonment without the alternative of a fine. His bail application to the Court of Appeal was indeed successful, but that was because his sentence was just two years imprisonment. The important point is that his appeal was heard in June, 2005, 4 months later; and the appeal was determined in October, 2005 just 8 months after conviction. It is our view therefore, that this Appellant is unlikely to serve a substantial portion of his sentence before his appeal is heard. Mr Shears-Moses has stressed the volume of the exhibits which will form part of the record in this Court. As I pointed out to him, documentary exhibits are photocopied for the record. They are not going to be retyped. Preparation of the record is therefore, unlikely to take much time. If there is any delay, Mr Shears-Moses can bring this to the attention of the Court. Once the record is ready, the Honourable the Chief Justice will assign the appeal to a panel for hearing.
7. Mr Bah, the Ag DPP, has filed an affidavit in opposition to the Appellant's Application, deposed and sworn to by him on 27 January, 2012. But since the matters canvassed by him have been dealt with above, I do not find it

necessary to reiterate the matters deposed to by him. I would only comment on Mr Bah's submission that Mr Shears-Moses's affidavit "*does not disclose exceptional circumstances, justifying bail pending appeal.*" As I have stated above, this is a criminal appeal, and not a civil appeal. Exceptional circumstances are criteria applicable to applications for stay of execution of judgments in civil proceedings, and not to criminal matters. In paragraphs 6 & 7, Mr Bah has succinctly set out the matters which should exercise our minds in dealing with this Application for Bail.

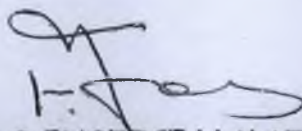
8. In the result, the Appellant's Application for Bail pending appeal is dismissed.



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE, JUSTICE OF APPEAL



THE HONOURABLE MRS JUSTICE A SHOWERS, JUSTICE OF APPEAL



THE HONOURABLE MRS JUSTICE N MATTURI-JONES,
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