CR. APP 2/2012

IN THE COURT OF APPEAL OF SIERRA LEONE

BTEWEEN:

DAVID KARGBO - 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 8th DAY OF MARCH,2012.

1. The Appellant David Kargbo, has in this Application dated 10th February,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 3 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 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 10 February,2012. Exhibited thereto are, firstly, EECSM1 which is a copy of the Indictment on which the Appellant was convicted. In Count II of that Indictment, the Appellant is charged with receiving various quantities of cosmetics and toiletries, 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 last year, and is now the Chairman of the Political Parties Registration Commission. In that judgment, ADEMOSU,JA gave the reasons on page 31 thereof, for believing that the Appellant was guilty of the offence with which he ~~is~~ was charged. EECSM3 is a copy of the Notice of Appeal dated 20th January,2012. EECSM4 is a copy of an amended Notice of Appeal dated 26th Janaury,2012. The grounds of appeal relate principally, to the identity of the goods stolen, and whether, the prosecution had succeeded in proving that the Appellant knew the goods he had received, were indeed stolen. The Appellant, of course, has the right to add further grounds of appeal to his amended Notice of Appeal, before the appeal comes up for hearing.

3. In his affidavit, Mr Shears-Moses 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 s result of the Appellant's conviction and sentence. That "*..admitting the Applicant to Bail will make him more useful for conducting his case in the supply of information and material.*" Basically, these are very much the same grounds canvassed by Mr Shears-Moses in a similar Application made on behalf of the Appellant Ibrahim Bah in an affidavit deposed and sworn to by him on 13 January,2012. And, as I pointed out in the Judgment in that Application, "*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. 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.*"
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. Again, quoting from that Judgment, "*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 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. .....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.*" Relying on what I said in the BAH Judgment, "*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."*
6. To quote again from that Judgment, since the arguments canvassed are very much the same: "*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."

7. The issue of whether the Appellant would have served a substantial portion of his sentence before his appeal was determined, ~~Mr Shears-Moses~~ is of more importance in this Application than in the BAH Application, as the sentence in this case was for three years only. This issue, was dealt with in the old WACA case of R v TUWANSHIE which Counsel on both sides agree, still governs applications of this nature. As I stated in the BAH Judgment "*...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 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.*" With the introduction of the use of written arguments, appeal hearings are now very short. Once the record is ready, the Honourable the Chief Justice will assign the appeal to a panel for hearing. Mr Shears-Moses has not cited any appeal which came up for the first time within the last 5 years in which the Appellant has served a significant portion of his sentence before his appeal was determined. He has not done so, because there is none. The only similar situation I can recall is that which arose in SOLOKU BOCKARIE's appeal. His appeal had been filed long before the new system came into operation. In fact, it was only heard and determined after I had become a Judge in 2007. I had the pleasant duty of writing the majority judgment, which set him free. By then, he had served his sentence.
8. Mr Monfred Sesay, Principal State Counsel has filed an affidavit in opposition to the Appellant's Application, deposed and sworn to by him on 27 February,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. In paragraphs 6, 7, and 8, Mr Sesay has succinctly set out the matters which should exercise our minds in dealing with this Application for Bail.

9. 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, JUSTICE OF APPEAL