

CIV. APP. 36/2010

IN THE COURT OF APPEAL OF SIERRA LEONE

IN THE MATTER OF THE CHIEFTAINCY ACT NO.10 OF 2009.

BETWEEN:

SAMUEL NGATEY GULAMA - 1<sup>ST</sup> PETITIONER/RESPONDENT

J.B. TOMAH KPANGBAVIA - 2<sup>ND</sup> PETITIONER/RESPONDENT

AND

MRS. DORIS FARMAR - 3<sup>RD</sup> PETITIONER/RESPONDENT

V

MR. FODAY MOMOH GULAMA- 1<sup>ST</sup> RESPONDENT/APPELLANT

THE NATIONAL ELECTORAL

COMMISSION - 2<sup>ND</sup> RESPONDENT/RESPONDENT

Counsels:

N.D. TEJAN COLE Esq. for the Appellant/ 1<sup>st</sup> Respondent

E. KARGBO Esq. for the Respondents/Petitioners

RULING DELIVERED THIS 26<sup>th</sup> DAY OF April 2012 BY

HONOURABLE MRS JUSTICE V. M. SOLOMON J. A.

### RULING

#### BACKGROUND/SUBMISSIONS:

This is an appeal for and on behalf of the Appellant against the decision of Honourable Mr. Justice S. A. Ademosu dated 6<sup>th</sup> day of July 2010 pursuant to leave granted to the Appellant by the Hon. Mr. Justice N. C. Browne-Marke J. A. dated 20<sup>th</sup> August 2010. The grounds of Appeal were dated 30<sup>th</sup> August 2012. Counsel for the Petitioners/Respondents had filed a Motion Paper dated 6<sup>th</sup> September 2010 which was struck out by this Court on 30<sup>th</sup> September 2010 as it was not brought pursuant to Rule 19 of the Court of Appeal Rules 1985 (hereinafter called "The Rules"). The Motion Paper was for an order to set aside the Notice of Appeal filed 30<sup>th</sup> August 2010 on ground of irregularities for non compliance with Rules 8 and 9 of the Rules in that names and addresses of persons affected by the appeal

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-2-

was not stated. On the 26<sup>th</sup> October 2011 this matter was called for hearing and both Counsels were given directions/directives by this court. On aforesaid date both counsels were present and the directives given were inter-alia that the Appellant was to file his synopsis of arguments within two weeks, that is, 9<sup>th</sup> November 2011 and the Respondents to file their synopsis of arguments two week thereafter, that is, 16<sup>th</sup> November 2011. The matter was adjourned for oral hearing to 24<sup>th</sup> November 2011.

The synopsis of arguments on behalf of the Appellant dated 10<sup>th</sup> November 2011 was filed in this Court's Registry on 11<sup>th</sup> November 2011. No synopsis of arguments was filed/lodged on behalf of the Respondents. Instead counsel for the Respondents by notice dated 15<sup>th</sup> November 2011 filed a "NOTICE OF INTENTION TO RAISE PRELIMINARY OBJECTION" on the following grounds, it reads thus:

1. That the said notice of appeal prepared and filed by the purported appellant does not comply with the Provision of Rules 889 of the Court of Appeal Rules 1985 (Public Notice No.29 of 1985).
2. The Notice of Appeal does not disclose or indicate the person appealing against the ruling of the High Court.

Mr. E. Kargbo Esq. Counsel for the Respondent raised the preliminary objection filed in his notice. He abandoned the first order sought due to its defect and proceeded on the objection raised with the second order. He relied on Rule 9 (1) of the Rules and Appendix 'A' Civil Form 1 No.5 of the Rules and urged this Court to strike out the Grounds of Appeal dated 30<sup>th</sup> August 2010. In reply to counsel for the Appellant Mr. Kargbo submitted that he is within time and had complied with Rule 19 of the Rules.

Mr. N. D. Tejan-Cole Esq. of Counsel for the Appellant submitted that this objection is belated and should have been raised before filing of the synopsis. Counsel submitted that the hearing of appeal commences on



-3-

date order was granted for filing of synopsis of arguments. He referred to Rule 19 of the Rules and submitted that preliminary objections must be raised 3 days before hearing. He submitted that in as much as the appeal filed does not substantially comply with all the provisions of the rules it will not cause any prejudice if an order is granted to include names and addresses of the parties affected by this appeal. He finally submitted that this appeal relates to an election which is recognized under the Chieftaincy Act 2009 and the Constitution of Sierra Leone Act No.6 of 1991. He finally urged this Court to exercise its discretion and effect **said amendment.**

**FINDINGS:**

The issue for my consideration is whether the notice of preliminary objection dated 15<sup>th</sup> November 2011 can be entertained at this stage of the hearing of the Appeal. The chronology of events has been referred to earlier in this ruling. In considering this preliminary objection I wish to refer to the notice dated 15<sup>th</sup> November 2011. During the hearing Mr. Kargbo submitted that there was a previous notice of motion relating to this objection which was overruled by this Court. As I was a member of that panel of judges I have considered that motion and the ruling thereon. During his submissions he abandoned the first order due a defect on the notice and proceeded with the second order. Can the second order sought be sustained in its present form? Mr. Kargbo has relied on Rules 9 and 19 of the Rules. In his motion paper he did not comply with provisions of Rule 19 of the Rules and his Motion Paper was struck out. Indeed Rule 9 of the rules is explicit on the form/content of all Civil Appeals. But an application for preliminary objection pursuant to Rule 9 must be stated on the face of the notice filed. That was the Intention of Counsel for the Respondent in his first order but he abandoned said order as it was defective in that there is no Rule 889 of the Rules. Every

-4-

preliminary objection in this Court should comply with Rule 19 of the Rules which reads thus:

"19 (1) A Respondent intending to rely upon a preliminary objection to the hearing of the Appeal *shall give the Appellant three clear days notice thereof before the hearing setting out the grounds of objection and shall file such notice together with four copies thereof with the Registrar within the same time*"

(Emphasis added)

It is evident from the notice dated 15<sup>th</sup> November 2011 that the Respondent has not complied with this Rule. First of all, the said notice did not refer

to this Rule to be relied upon and the grounds of objections were not mentioned. Further this notice was filed after directions were given and

counsel for the Appellant had complied with the said directions. Mr.

Kargbo is of the view that the "hearing" referred in Rule 19 of this Appeal commenced when oral submissions are made; whereas Mr. Tejan-Cole is of the view that "hearing" commences when directions were given. I

subscribe to Mr. Tejan-Cole's view that hearing of an appeal commences when directions/directives given for filing of synopsis as counsels have discretion on whether to rely on their synopsis or to make oral submissions to highlight any matters raised in their synopsis. It is the practice that

when a Counsel does not make oral submissions, the matter is then withdrawn for judgment. In some cases, if counsels do not submit any

synopsis after time fixed for its presentation and a reminder notice served, this Court is at liberty to withdraw the matter for judgment,

I shall now refer to Rule 19 (2) of the Rules which ought to be read with Rule 19 (1) and it reads thus:

"19 (2) if the Respondent fails to comply with this rule the Court *may refuse to entertain the objection or may adjourn*

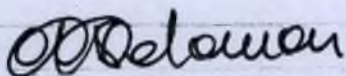


-5-

hearing thereof at the cost of the Respondent *or make such other order as it think fit*" (Emphasis added).

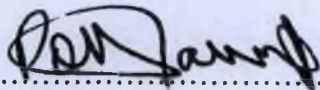
This provision has given this Court wide discretion in its determination of preliminary objections. The names and addresses of persons affected by the Appeal would not cause any prejudice to the Respondents. This objection is belated and ought to have been before order for directions was given by this Court. This Court will not assist a party who has slept on his rights or an indolent party. This Court is a Court of both law and equity. Rule 19 (1) of the Rules has not been complied with and in the premises the preliminary objection raised is overruled. Upon refusal of the application by motion paper dated 6<sup>th</sup> September 2010 counsel for the Respondent should immediately thereafter have filed the notice of intention to raise preliminary objection but only filed the notice on 15<sup>th</sup> November 2011 over a year later and after directions have been given and the synopsis of arguments filed by the Appellant.

In the premises therefore the preliminary objection is overruled. The Appellant is to file and serve within 4 days of this order the names and addresses of all the persons who are to be affected by this Appeal. No order as to costs.



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

I AGREE.....



HON. JUSTICE P. O. HAMILTON J.S.C

I AGREE.....



HON. JUSTICE A CHARM J