

CR.APP 20/11 & 19/2011

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

PHILIP J. LUKULEY - APPELLANT

AND

THE STATE - RESPONDENT

CORAM:

Hon. Justice P.O. Hamilton J.S.C

Hon. Justice A. Showers, J.A

Hon. Justice A.H. Charm, J

SOLICITORS:

E.E.C. SHEARS-MOSES ESQ., FOR APPELLANT

R.S.FYNN ESQ., FOR RESPONDENT

RULING DELIVERED THIS 28th DAY OF May, 2012
HAMILTON J.S.C

There is filed a Notice of Appeal dated 10th August, 2011 together with a Notice of Extension of time to file the said Notice of Appeal.

The application was filed pursuant to Rule 40(3) of the Court of Appeal Rules, 1985.

R.S. Fynn Esq., of Counsel for the Appellant submitted that there is set out the reasons for the delay in filing the said Notice of Appeal.

E.E.C. Shears-Moses of Counsel for the Respondent submitted in his reply that there is no notice of appeal purportedly against the acquittal nor is there an application for extension since a notice of appeal can only be filed when an extension of time has been granted.

Counsel further submitted that what is before this Court as CR.APP.19/2011 is no appeal since leave was not granted for an extension of time to file the appeal.

Secondly the application for extension of time is not a proper application as it was signed by John Fitzgerald Kamara, Commissioner, Anti-Corruption Commission who is not a party within the rules to be called an Appellant.

He then submitted that if it was signed for and on behalf of the aggrieved party it would have been in place. What is before the Court, Counsel submits is a personal dissatisfaction which has nothing to do with this matter.

R.S. Fynn Esq., of Counsel for the Appellant in his reply submitted that the application is filed pursuant to Rule 40(3) of the Court of Appeal Rules, 1985 which envisages that an application for extension of time must be filed together with such form of notice as would have been appropriate to the case had the notice been filed within time to the Registrar of the Court of Appeal.

On the signature he submitted that Joseph Fitzgerald Kamara signed in his official capacity as Commissioner of the Anti-Corruption Commission and the Anti-Corruption Commission is a corporate body which section 2(3) of the Act empowers the commission to authenticate deeds and acts of the commission. Section 89 he submitted gives the commission the right to prosecute Corruption cases. The Constitution Amendment Act, 2008 takes some powers away from the Attorney-General.

Counsel finally submitted that Joseph Fitzgerald Kamara was at the time he signed the notice of appeal and the application for an extension of time within which to file the appeal he was competent as he signed in his official capacity.

Rule 40(3) of the Court of Appeal Rules 1985 provides:

"where a person desires to obtain from the court an extension of time to enable him to appeal.....he shall do so by sending to the Registrar on application, for such an extension which application shall be in Form 4 in Appendix C together with such form of notice or application as would have been appropriate to the case under Sub-rule (1) or (2) had the notice been given or the application made within time".

Rule 40(3) of the said Court of Appeal Rules 1985 carries a side note "Criminal Form 4" which is to be found on Appendix C of the said rules.

The left side note of Criminal Form 4 reads: "Here state name of person aggrieved and offence e.g. **"The State"** (emphasis mine).

The Constitution of Sierra Leone (Amendment) Act, No. 9 of 2008 being an Act to amend the Constitution of Sierra Leone 1991 (Act No. 6 of 1991) grant the Anti-Corruption Commission the right to prosecute offences involving corruption and the

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Constitution is the Supreme law of the land. This therefore takes from the Attorney-General the right to prosecute corruption case in the name of the Republic of Sierra Leone and vests it in the Anti-Corruption Commission.

The power is vested in the Commissioner of the Anti-Corruption Commission not in him as a person. The Notice of Appeal and the application for extension of time should have read:

"I Commissioner of the Anti-Corruption Commission acting for and on behalf of the State being dissatisfied.." and not as in contained in the present notice and application sent and filed with the Registrar"

Counsel for the Appellant R.S Fynn Esq., did submit that Joseph Fitzgerald Kamara signed in his official capacity. The question now arises as to whether he should have signed such notice and application. My answer to this is in the negative. Section 2(2) of the Anti-Corruption Act, 2008 provides: "The Commission shall be a body corporate with perpetual succession..."

The Anti-Corruption Commission being a body corporate brings it in line with Rule 42(4) of the Court of Appeal Rules 1985 which provides:

"(4) in the case of a body corporate where any notice or other documents is required to be signed by the appellant it shall be sufficient compliance there with if that notice or other document is signed by the Secretary, Clerk or Manager of the body corporate" (emphasis mine).

The Notice of Appeal and the application for extension of time within which to appeal was signed by one Joseph Fitzgerald Kamara, Commissioner, Anti-Corruption commission. Rule 42(4) of the Court of Appeal Rules 1985 is clear in its provision and the persons to sign such documents are clearly stated in it In my humble opinion therefore the documents signed by Joseph Fitzgerald Kamara, Commissioner, Anti-Corruption Commission is void and of no effect.

In light of the above postulations. I have no hesitation whatsoever in coming to the most inevitable conclusion that the Notice of Appeal and the application for extension of time within which to appeal are not in their proper form and are accordingly struck off.

Hon. Justice P.O. Hamilton JSC.

**I agree:
Hon. Justice A. Showers. J.A**

**I agree:
Hon. Justice A.H. Charm, J.**