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IN THE COURT OF APPEAL OF SIERRA LEONE

CR APPS 18,19&20/2013

DR M M AMARA -APPELLANT

V

THE STATE - RESPONDENT

COUNSEL:

MRS FATMATA SORIE for the Appellant

MRS OCEANA GEORGE for the Respondent

CORAM:

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

THE HON. MS JUSTICE V M SOLOMON, JUSTICE OF APPEAL

THE HON MR JUSTICE A CHARM, JUDGE

JUDGMENT DELIVERED THE 6th DAY OF DECEMBER, 2013.

THE APPLICATION

1. This is an Application dated 13th November, 2013 filed on behalf of the Appellant herein, Dr Amara. On 19th September, 2013 the Appellant was convicted by KATUTSI, J sitting in the High Court, Freetown of the offence of Conflict of Interest contrary to Section 45(3) of the Anti-Corruption Act, 2008. He was sentenced by the trial Judge to pay a fine of Le350million, or, to serve a term of imprisonment of 3 years. The Learned Trial Judge also granted the Appellant a period of 30 days from the date of judgment, within which to pay the fine, failing which, he would have to serve the term of imprisonment. This meant that the fine should have been paid in full against 19th October, 2013.

PAYMENT OF PART OF THE FINE

2. On 24th October, 2013, as evidenced in NRA receipt no. 0417294 the Appellant paid into the Judicial Sub-Treasury, the sum of Le50million. The remaining balance of the fine in the sum of Le300million remains unpaid. According to the Appellant, he intends to pay the fine, but has not presently got the wherewithal to do so. This is why he is asking the Court for an extension of time within which to do so, or, for an Order that he

be permitted to enter into a Recognisance for the payment of the remaining balance.

INAPPLICABLE STATUTORY PROVISIONS

3. According to the Appellant's Solicitor and Counsel, the Application is made pursuant to Sub-Section 67(2) of the Courts' Act, 1965 - (CA, 1965); Sub-Section 79(4) of the Criminal Procedure Act, 1965 - (CPA, 1965); and Sub-Rule 53(7) (wrongly described by her as Section 53(7) of the Court of Appeal Rules, 1985 - (The Rules). She also referred to Sub-Section 233(1) of the Criminal Procedure Act, 1965. At the hearing, we pointed out to her that all of these provisions were not applicable to the Application. Sections 79 and 233 respectively of the CPA, 1965 apply to trials only, and not to appeals. Sub-Rule 53(7) of the Rules, only applies at the hearing of the substantive appeal, and not at this stage.

SUB-RULE 50(1) COURT OF APPEAL RULES, 1985

4. In our view, the only relevant provision ^{is} Sub-Rule 50(1) of the Rules. It states as follows: "*Where on the conviction of a person, the Judge of the Court below.....makes on the conviction of any person before him any order for the payment of money by the convicted person.....the operation of such order(s) shall in any of such cases be suspended when notice of appeal is given until the determination of the appeal against the conviction in relation to which they were made....*" The words of this sub-rule may, perhaps, for the purpose of argument be compared and/or contrasted with those used in Sub-Rule 48(2) of the Rules. That sub-rule states as follows: "*Where any person has been convicted and is thereupon sentenced to the payment of a fine, and in default of such payment, to imprisonment, and he intimates to the Judge of the Court below that he is desirous of appealing against his conviction, the Judge may, if he thinks fit, order such person forthwith to enter into recognisances in such amount, and with or without sureties in such amount, as the Judge may think fit, to prosecute the appeal.....*" Clearly, in the latter sub-rule, the Trial Judge has something to do on application made to him. He may, if he thinks fit, respite payment of the fine. No mention is made in sub-rule 50(1) of this Court doing anything: it merely states that the operation of the order to make payment of money shall be suspended when notice of appeal is given. We are of the view that "*any order for the payment of*"

money" in terms of sub-rule 50(1) includes an order for payment of a fine. But the matter does not end there.

THE SENTENCE

5. The sentence in this case was given in the alternative: the Appellant could either pay the fine imposed, or go to jail for 3 years. The matter was further complicated by the fact that the Learned Trial Judge gave the Appellant 30 days within which to pay the fine. It does not appear to us that he intended that the Appellant should really serve a term of imprisonment. The term of imprisonment was annexed to payment of the fine as a form of security. As he himself said at the sentencing hearing, as appears on the last page on Mrs Sorie's exhibit FS3, *"... The offence is not very much related to moral turpitude. It is a technical offence. All in all I deem a sentence of a fine approve (sic) of in the circumstances. Accused is sentence(d) to a fine of Le350,000,000 or to serve 3 years in default. He is given 30 days in which to pay his fine. I so Order."* The Appellant was acquitted on the 26 Counts of Misappropriation of Donor Funds contrary to Sub-Section 37(1) with which he had also been charged.
6. If the sentence had been payment of a fine of Le350million or a term of imprisonment for 3 years, without more, our view is that the Appellant should have begun serving his sentence from the date of sentencing, and would only have been released from jail after paying the fine in full. By introducing the element of delayed payment, it seems to us that the Trial Judge had unwittingly opened up a possibility which would not have arisen had no time been given to the Appellant: an application to extend the time within which to complete full payment of the fine. Before the 30 day period had expired, the Appellant had paid part of the fine in the sum of Le50million.

SUB-RULE 48(2) APPLICATION IN THE HIGH COURT

7. According to Mrs Sorie, she did file an Application pursuant to sub-rule 48(2) of the Rules, to the Court below to suspend payment of the fine until determination of the appeal, or, to extend time within which to pay the fine imposed. She was not in Court at the first hearing due to the fact that she had not been notified of the same. By the time she got there, the Application had been struck out by PAUL,J before whom the Application came up. Apparently, KATUTSI,J had left office by then. We

do not of course know, whether KATUTSI,J, had he been in office, would have been minded to further suspend payment, or, to extend time; nor, do we know whether PAUL,J had he heard the Application on its merits, would have been inclined to exercise his discretion in favour of doing the same. The Judge in the Court below has a discretion whether to suspend payment of the fine imposed. Sub-Rule 48(2) clearly states that he *may* do so, which imports a discretion into the legislative provision.

INTERPRETATION OF SUB-RULE 50(1)

8. The words used in sub-rule 50(1) appear to contain no such element of discretion. In their ordinary meaning, the words seem to mean that immediately a Notice of Appeal is filed, payment of the fine imposed should be suspended. We do not think this was the intention of the Rules Committee, or, of the Legislature which passed the Rules into Law. Further, the absence of any provision in sub-rule 50(1) as to what should happen to the Appellant, or what he should do, in the interim, is further evidence that the apparent open-endedness of sub-rule 50(1) could not be what the Rules Committee, nor Parliament, intended. There is no express provision in that sub-rule, as there is in sub-rule 48(2) for entering into recognisances, which is one method of ensuring that payment which has been suspended, would be made if an appeal fails. We would recommend that the Rules Committee reviews this Rule, so as to make it more intelligible and workable. For the time being, we are inclined to fill in the lacuna in sub-rule 50(1) so as to make what we have decided to do, workable.

1ST APPLICATION BEFORE THIS COURT

9. For present purposes, we have to deal with sub-rule 50(1) in its present form. The Appellant had in an earlier Application dated 8th November, 2013 applied to this Court for Bail pending appeal. That Application was dismissed out of hand because the Appellant was not then in prison: Bail could only be granted to an applicant who was incarcerated. Even now, we do not think we can grant Bail pending appeal, per se. Bail could only be considered in the context of deciding how a recognisance could be enforced, if we are inclined to allow delayed payment of the fine imposed by the Trial Judge.

AFFIDAVIT IN OPPOSITION

10. The Application is opposed by the State-Respondent. Mrs George, Counsel for the State, has deposed and sworn to an affidavit in opposition on 27th November, 2013. She has deposed that the Appellant does not wish to pay the fine; that there have been several cases in which convicted persons have been given time to pay their fines, and have failed to do so.


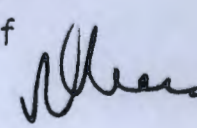
DIRECTION AS TO THE INTERPRETATION OF SUB-SECTION 233(1)
CPA, 1965

11. That some persons have failed to pay their fines should not be counted against an Appellant who has paid his fine in part. As we have stated above, this Application has only arisen because the Trial Judge gave the Appellant time within which to pay his fine. In our view, and as a direction to Judges at first instance, the provisions of Sub-Section 233(1) of the CPA, 1965 only apply when a fine only, is imposed by the trial judge, and not when a term of imprisonment is imposed as the alternative to a fine. Offences under for instance, Section 15 of the Public Order Act, 1965 and under Section 21 of the Fisheries (Management and Development) Act, 1994 as amended, are punishable by just fines without any alternatives. Once the element of suspension of payment of a fine has arisen, issues must arise as to whether time should be extended for payment of the same. As we have said above, we do not know what KATUTSI, J's attitude would have been to an Application such as the one under consideration. PAUL, J did not consider the Application before him on its merits.
12. We take cognisance of the stance taken by the State represented by Mrs George. We certainly will not condone, and will not encourage the non-payment of fines. But each case has to be decided on its own peculiar facts.
13. We think that in cases where a Trial Judge is about to suspend payment of a fine where he has also imposed a sentence to a term of imprisonment as an alternative, Counsel should draw his attention to the express provisions of sub-section 233(1) of the CPA, 1965: that if it is an "either/or" situation, one form of punishment must take effect, if the other does not take effect immediately. We strongly urge trial judges not to allow time for payment where the alternative is a prison sentence.

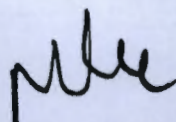
FINDINGS

14. Coming to the facts of this case, we have taken into consideration the fact that the Appellant has paid some portion of the fine imposed on him - he has paid one-seventh of the fine. We have also studied the proposals he has put forward through his Solicitor and Counsel. We do not think they are enough, nor satisfactory. If we were to accept these proposals, fines will never be paid in full, and the Courts will be clogged with enforcement proceedings. That is not the purport or the purpose of the criminal justice system in our country. We think that issues of extension of time have arisen, brought up by the Learned Trial Judge, and we must deal with them. We are not inclined to suspend payment of the fine. We are, instead, inclined to grant the Appellant, an extension of time, in line with the thinking of KATUTSI, J who tried and convicted and sentenced the Appellant. If Appellants were to abuse this provision, we feel certain that adjudicating tribunals might very well veer in the opposite direction: imposing terms of imprisonment without alternatives.

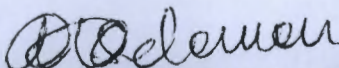
15. In the premises, we make the following Orders:

- i. The Appellant shall pay the remainder of the fine imposed on him by The Honourable Mr Justice Katutsi, i.e. the sum of Le300million, not later than 6th May, 2014.
- ii. In view of sub- paragraph (i) above, the Appellant shall himself enter into a recognisance in the sum of Le300million and shall surrender to the Registrar of the ~~High~~ Court the file deed to any property he has in the Western Area of or above that value, and the same shall be kept in safe custody by the Registrar until the full payment of the sum of Le300million has been made as directed above. The Recognisance shall, with the appropriate adaptation be, as set out in Criminal Form 12 in Appendix C to the Court of Appeal Rules, 1985. 
- iii. The Appellant shall also provide two sureties who shall each enter into recognisances in the sum of Le300million, such sureties to deposit their title deeds with the Registrar of the Court of Appeal until full payment of the fine of Le300million has been made by the Appellant. The Recognisances shall, with the necessary adaptation, be as set out in Criminal Form 13 in Appendix C to the Court of Appeal Rules, 1985.
- iv. On full compliance with sub- paragraphs (i) and (ii) above, the Appellant shall be released from prison. 

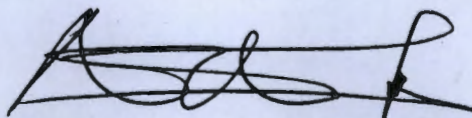
- v. As soon as the Appellant has paid the said sum of Le300million in full, this fact shall be Certified to the Court by the Registrar.
- vi. If the Appellant fails to pay the said sum of Le300million in full against 6th May, 2014 he shall be arrested immediately by Warrant issued under the hand of a Judge or a Justice of Appeal, and returned to prison forthwith.



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



THE HONOURABLE MS JUSTICE V M SOLOMON, JUSTICE OF APPEAL



THE HONOURABLE MR JUSTICE A CHARM, HIGH COURT JUDGE