Cr. App. 10/2010

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

HAJA AFSATU OLAYINKA EBISHOLA KABBA - APPELLANT/APPLICANT

AND

THE STATE - RESPONDENT

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

HON. MR. JUSTICE E.E. ROBERTS, J.A.

HON. MRS JUSTICE A. SHOWERS, J.A.

COUNSEL:

J.B. JENKINS-JOHNSTON, ESQ. FOR THE APPELLANT/APPLICANT

R.S. FYNN, ESQ. FOR THE RESPONDENT

RULING DELIVERED THIS 30th DAY OF APRIL, 2014

ROBERTS,J.A.

The Appellant/Applicant here was charged on a several counts indictment preferred by the Anti Corruption Commission . She was tried and on the 12th October 2010 was convicted on 5 counts. The learned trial judge pronounced a sentence of Le30 million or 3 years imprisonment on each of the 5 counts. The judge further pronounced that "in addition to the fines the accused is to refund the sum of Le300 million being the amount subjected of the offences within the same period as the fines." According to the Appellant/Applicant she duly paid the said sum. The Appellant/Applicant then appealed to this Court against the said conviction and sentence and on the 29th November 2013 her appeal was upheld, her conviction quashed and the court ordered that all fines imposed that was paid were to be returned to her. On the 3rd December 2013 solicitors for the Appellant/Applicant wrote to the Anti Corruption Commission demanding the refund of the sum of Le300 million paid to them but they replied that the order for refund related only to fines paid. The Appellant/Applicant then filed the motion herein dated 18th December 2013 praying for the following order:

"That consequent upon the quashing of the Appellant's conviction by the Court of Appeal in its Judgment on the 29th November 2013. *That the sum of Le300,000,000.00 (Three Hundred Million Leones) paid to the Anti Corruption Commission by Order of the Learned Trial Judge on 12th October 2010 BE REFUNDED TO THE APPELLANT.*

In support of her application the Appellant/Applicant relied on the affidavit of Haja Afsatu Olayinka Ebishola Kabba sworn to on 10th December 2013 together with the attached exhibits. The State Respondent filed an affidavit in opposition sworn to by one Felix Lansana Tejan Kabba on the 16th December 2013. Counsel for State then filed a Notice of Preliminary objection.

At the mention of the motion for hearing, counsel for the State referred to his Notice of Preliminary objection and raised an objection on the ground of irregularity as the motion is filed in a matter that has been completed and determined by this Court by judgment delivered on the 29th November 2013. Counsel submitted that once a matter has been determined by this Court then this Court should not be resorted to by any party who may feel that the Court's determination did not go far enough or who may be aggrieved by the decision. Counsel submitted that the matter is now in the Supreme Court as the Respondents have appealed to that Court. Counsel submitted that if the Applicants were allowed to come to this Court after it had delivered judgment then there would be no end to litigation.

Counsel for the Appellant/Applicant in answer submitted that by filing an affidavit in opposition the Respondent had waived their right to raise the preliminary objection. Counsel submitted that this court has inherent power to correct its own judgment where that is found to be necessary.

It seems to me the main issue in the preliminary objection is whether this Court has power to make the alteration or correction to its judgment already delivered.

I shall only make a few comments on the argument of whether the Court of Appeal has inherent jurisdiction in its Criminal Division. I may have to give credence to the distinction (as perceived by some jurists) between inherent jurisdiction and inherent power of the Court. I have therefore decided to deal with this application and in effect

decide whether this Court has inherent power (if not jurisdiction) to hear and grant the Appellant's present application

It is my view that every Superior Court does and must have some power and jurisdiction which is inherent in the very nature of the Court especially as a Court of record in order to maintain its authority and effectiveness, to prevent any obstruction of its process and to do justice. This power is derived not from any particular statute or legislation but from inherent powers vested in a Court to enable it control the proceedings before it.

In CONNELLY V DPP 1964 AC p. 1301 Lord Morris had this to say:

> "There can be no doubt that a Court which is endowed with a particular jurisdiction had power which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are in inherent in the jurisdiction. A Court must enjoy such powers in order to enforce its rule of practice and to supress any abuse of its process and to defeat any attempt thwarting of its process."

In Halsabury's Laws of England 4th edition Volume 37 paragraph 14 page 23 the authors defined inherent jurisdiction as follows:

> "The jurisdiction of the court which is comprised within the term "inherent" is that which enables it to fulfil itself, properly and effectively, as a court of law. The overriding feature of the inherent jurisdiction of the court is that it is a part of procedural law, both civil and criminal, and not a part of substantive law, it is exercisable by summary process, without a plenary trial……
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> In sum, it may be said that the inherent jurisdiction of the Court is a virile and viable doctrine, and has been defined as the reserve or fund of powers, a residual source of powers, which the Court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of due process of law, to prevent vexation or oppression, to do justice between the parties and to secure a fair trial between them."

The inherent power of a Court is by its nature therefore limited and is generally recognised to be available in the following circumstances.

a) To ensure convenience and fairness in legal proceedings.
b) To prevent steps being taken that would render judicial proceedings inefficacious.
c) To prevent abuse of process
d) To act in aid of Superior Courts and in aid or control of inferior Courts and tribunal

It is my view therefore that this Court ie (the Court of Appeal) even in its criminal jurisdiction possesses some inherent or implied powers though limited in scope and application as confirmed by the authorities already cited.

Counsel for the Appellant submitted that this Court has power to hear and grant the application as it is to correct its own judgment. The Appellant seems to be asking this Court to make an order which it did not originally make but (according to Counsel) having regard to its order upholding the appeal and quashing the conviction it appeared to be an omission on the part of the Court. This can be gleaned from paragraph 4 of the Appellant's affidavit where she deposed as follows:

> "That no mention was made of the sum of Le 300 million, which I beli9eve4 was an omission, since the quashing of the Conviction meant that all punishment meted and under the conviction ought to be reversed."

The questions I have therefore asked and which I shall attempt to answer are:

a) Was there indeed an omission on the part of the Court? And

b) Can the Court correct that omission as prayed for?

Counsel for the Appellant in support of his contention relied on the case of THYNNE V THYNNE [1955] 3 All ER 129. With respect to Counsel I do not find this case to be particularly useful in this application. That case was a civil action (Divorce) and what was recognised was the Court of Appeal's inherent power to amend an order after it had been drawn up and entered, so as to make the portion under it clear and free from ambiguity.....

This case cannot be authority for what obtains in a criminal appeal. What may be relevant perhaps is whether this Court has similar powers when acting in its criminal jurisdiction in a criminal appeal. It is my view however that this court as a court of

record should and does have power, (whether inherent or otherwise) though in very limited circumstances, to correct or amend a slip or alter its judgment.

In Archibold 2002 Edition page 973 paragraph 7 – 223 under the rubric "Alteration of decision, relisting of cases", the Authors, citing the case of R. V. CROSS [1973] QB of 937, stated that " the Court of Appeal said that it is well recognised that a Court of record has power to alter a judgment or order which it has made within certain limits. The limits set in general appeal's to be that the power to alter the judgment ceases when the judgment is, in the words of the civil courts, drawn up. In other words, the general principle seems to be that when once the judgment has been finally recorded, then the inherent power to vary is lost....."

The learned Authors however went on (in page 973 of Archibold supra) to caution that the limits (as to the power of the Court to alter its judgment) set out in the CROSS case did not apply where what has happened is a nullity. See R V. DANIEL 1977 QB 264. See also ARCHIBOLD 38th Edition paragraph 909 page 531.

Having carefully considered the above authorities in relation to the present case I have made the following observations.

1. That in the present case the judgment of this Court was delivered on the 29th November 2013 and this application was made on the 10th of December 2013.
2. There is no nullity complained of in the judgment.

In the light of the above observations it would appear that this court does not have the power to make the order sought and alter its own judgment in this particular case. In our jurisdiction it is the Court that hands out its printed and signed judgment to the parties after it has been delivered in Court. The parties do not have to draw up the judgment.

It is my view therefore that after the Court had delivered its judgment in a criminal appeal it has no power to alter same on an application made several days later as in the present circumstances. Again I must draw a distinction between this court acting in its civil and criminal jurisdiction

I am fortified in the conclusions I have reached when I consider that the Appellant has not persuaded me that it was an omission of the Court's part when did not order the sum of Le300 million to be refunded to the Appellant. I cannot safely say that by making the

order sought it would be making manifest what the Court intended to its original judgment.

Indeed the judgment of this Court did not in my view resolve the issue of whether the sum was or was not public funds and or that it belonged to the Appellant. This Court in this application would have to be careful not to order a refund to the Appellant unless it is certain that there was no dispute as to the ownership of the said sum and that indeed it was not public funds but that it belongs to the Appellant.

This Court was also informed during arguments that the Respondent has meanwhile appealed to the Supreme Court which by virtue of its statutory and other powers can make orders relating to the appeal before it and all other orders that ought to have been made by this Court or the High Court as well as any order of the nature of what is now being sought by the Appellant. The Appellant would therefore not be without a remedy as the Supreme Court has power to grant any application or make any orders that would have the same or similar effect as what is prayed for in this application.

For the above reasons and in the circumstances of this case the preliminary objection is therefore upheld. The Motion dated 18th December 2013 is accordingly struck out.

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HON. MR. JUSTICE E.E. ROBERTS J.A.

I agree.....

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

I agree.....

HON. MRS. JUSTICE A. SHOWERS, J.A.