

CIV. APP. 68/2013

IN THE COURT OF APPEAL OF SIERRA LEONE
(CIVIL APPELLATE JURISDICTION)

BETWEEN:

JUNIOR JOHN MANSARAY - APPELLANT

AND

MR. JOSEPH P.A. KOROMA - RESPONDENT

CORAM:

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

HON. MRS. JUSTICE N.F. MATTURIE-JONES J.A.

HON. MR. JUSTICE M.F. DEEN-TARAWALLY J.A.

COUNSEL

S.S. THOMAS ESQ. FOR THE APPELLANT

O. JALLOH ESQ. FOR THE RESPONDENT

JUDGMENT DELIVERED THIS 18th DAY OF Dec , 2015

HAMILTON J.S.C.

In this matter a preliminary objection dated 13th August, 2015 was taken by Counsel for the Respondent that this Court lacks jurisdiction to hear this appeal on the ground that this judgment/order dated 19th November, 2013 appealed against by Counsel for the Appellant is an interlocutory judgment/order. Counsel submitted that leave of the High Court ought to have been sought and if refused then it can be sought in the Court of Appeal before filing the Appeal. This was not done as such Counsel for the Respondent submitted that this failure renders the Appeal a nullity.

Counsel referred to the notice of motion dated 9th October, 2013 which sought the following orders:-

1. That this Honourable Court do grant an interim stay of execution of the Default Judgment dated 15th January, 2003 and all subsequent proceedings pending the hearing and determination of this Application.
2. That this Honourable Court do grant a stay of execution of the default judgment dated 15th January, 2003 and all subsequent proceedings pending the hearing and determination of this action on its merits.
3. That this Honourable Court do set aside the Default Judgment dated 15th January, 2003 and all subsequent proceedings ex debito Justicia.
4. This Honourable Court do grant the Defendant/Applicant herein leave to file his Defence out of time.
5. Any further or other that this Honourable court may deem fit and just in the circumstances.
6. That the costs of this Application be costs in the cause.

This application dated 9th October, 2015 was dismissed on 19th November, 2013 and Counsel submits that the appeal filed does not contain any leave nor was any leave sought by Counsel for the Appellant. The ruling dated 19th November, 2013 Counsel submits is an interlocutory ruling as it does not determine the rights of the parties citing Richard Zachanah v. Jama; Morowa SC 2/87 unreported and Steinway & Sons v. Broadhurst Clegg (1983) T.L.R. and then submitted that the Appellant failed to seek leave of the Court before filing his appeal. Counsel further cited Rules 10(1) and (2) of the Court of Appeal Rules 1985 as amended by Constitutional Instrument No.1 of 2003 and also Section 56(1)(b) the Courts Act, 1965. He then submitted that the papers filed are a nullity.

Counsel for the Appellant/Respondent submitted that the Order dated 19th November, 2013 was a final Order/Judgment as such there is no need to seek leave of the Court as all the issues appertaining to the pre-existing rights of the plaintiff as against the defendant has been

determined citing *Rules 31 and 32 of the Court of Appeal Rules 1965*. Counsel finally submitted that the order/judgment was final though made on an interlocutory application relying on *Attorney-General v. Great Eastern Railway Co. (1879) WLR 759* and that an Order made refusing unconditional leave to defend is not an interlocutory order for purposes of an appeal but that the refusal determines the matter.

Before proceeding into the merits of the preliminary objection raised by Counsel for the Respondent, let me briefly dispose of *Rules 31 and 32 of the Court of Appeal Rules 1985* cited and relied upon by Counsel for the Appellant/Respondent which deals with the general powers of the Court to give any judgment and make any Order. These rules in my opinion applies where an appeal is being heard and determined not in a situation such as the present application which challenges the jurisdiction of the Court to even hear the appeal. *Rules 31 and 32 of the Court of Appeal Rules 1985* does not apply in this application.

The rules cited by Counsel for the Applicant reads:

Rule 10(1) of the court of Appeal Rules 1985 as amended by Constitutional Instrument No.1 of 2003 provides:

"10(1) Where an appeal lies by leave only, any person desiring to appeal shall apply to the Court below by notice of motion within fourteen days from the date of the decision against which leave to appeal is sought or, pursuant to rule 64, to the Court by notice of motion within fourteen days from the date of such refusal by the Court below, unless the Court below or the Court enlarges the time".

Also Rule 11(1) provides:

"No appeal shall be brought after the expiration of fourteen days in the case of an appeal against an interlocutory decision or of three months in the case of an appeal against a final decision unless the Court enlarges the time".

Finally Section 56(1) of the Courts Act 1965 reads:

"56(1) subject to the provisions of this Section, an appeal shall be to the Court of

Appeal:

(b) *By leave of the Judge making the Order or of the Court of Appeal, from an interlocutory judgment, Order or other decision given or made in the exercise of any such jurisdiction as aforesaid".*

The distinction between interlocutory and final judgment was considered in Blay v. Solomon (1947) 12 WACA 175. In this case the trial judge ordered that an account as between the respondent and the appellant be filed and that the property be sold by auction. The Court held that for the reasons given in the judgment this was an interlocutory decision.

From a long line of cases bordering on the distinction between interlocutory and final judgment such as Coker v. Coker (1950-56) ALR S.L. 130, Elijah J. Speck v. Gbassay Kiestler (1962) S.L.R. 126 and Amoa Ababio & Anr. v. John Edmund Turkson (1950) 13 WACA 35 it is clear that a final decision is one that brings the action to an end in contradiction to an interlocutory decision which does not completely dispose of the matter.

In Seven Up Bottling Co. v. Abiola and Sons Bottling Co. Ltd. (2001) 38 W.R.N. 55 at 59 the Supreme Court of Nigeria adopted the applicable test enunciated in Bozson v. Altrincham U.D.C. (1903) 1 K.B. 547 at 548 in which Fry L.J. said:

"I think that the true definition is this. I conceive that an order is "final" only where it is made upon an application or other proceeding which must, whether such application or other proceeding fail or succeed, determine the action. Conversely I think that an order is "interlocutory" where it cannot be affirmed that in either event, the action will be determined".

Lord Alverstone C.J. in the same Bozson's case (Supra) further observed:

"It seems to me that the real test for determining the question ought to be this: Does the judgment or Order as made, finally dispose of the rights of the parties? If it does then I think it ought to be treated as final order but if it does not, it is then in my opinion, interlocutory order".

In the Seven Up Bottling Company's case (Supra) at page 65 Karibi-Whyte JSC delivering the lead judgment examined the issue of the applicable test and then opined that:

"The ideal approach is to consider both the nature of the application and the nature of the order made in determining whether an order or judgment is interlocutory or final in respect of the issues before it, as between the parties to the litigation. Thus where the nature of the application does not aim at finally determining the claim or claims in dispute between the parties, but only deals with an issue, both the application and the order or judgment must be interlocutory However, where an application has the effect by the order therefore of finally determining the claim before the Court, the order or judgment may properly be regarded as final".

The circumstances from which this appeal arises can be gleaned from the motion dated 9th October, 2013 and the Order/judgment dated 19th November, 2013 contained at pages 35 and 79 to 85 of the records.

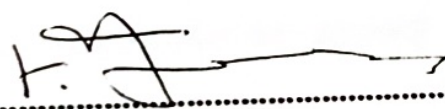
The Order of Rashid J. (of blessed Memory) dated 15th January, 2003 which the application dated 9th October, 2013 seeks to set aside with leave to file defence out of time cumulated in the order/judgment of 19th November, 2013.

We are of the considered view that by the nature of the application and the order/judgment made by the Court was interlocutory since the rights of the parties have not be finally determined. There is nowhere in the records that special leave to appeal was sought and refused by the Court below or even in this Court. If special leave had been granted this Court could have properly entertained this appeal but this is not the case.

Let me note in closing that this application touches on the jurisdiction of the Court to entertain this appeal. Jurisdiction is a fundamental issue touching and concerning the power of the Court to act. Where the Court has no jurisdiction to entertain a matter any proceedings and decision given thereon is a nullity no matter how well conducted the proceedings were. Judicial power is inextricably tied up with jurisdiction and justiciability. A Court can only exercise its power to entertain a matter where it has jurisdiction.

The preliminary objection raised by Counsel for the respondent is upheld and the appeal is therefore struck out with cost to the respondent in the sum of Le. 3,000,000/-


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

I AGREE: 
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HON. MRS. JUSTICE N.F. MATTURIE-JONES J.A.

I AGREE: 
.....
HON. MR. JUSTICE M.F. DEEN-TARAWALLY J.A.