

CR. APP 1/2012

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

IBRAHIM BAH - APPELLANT

AND

THE STATE - RESPONDENT

CORAM:

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

THE HON. MRS JUSTICE A SHOWERS, JUSTICE OF APPEAL

THE HON. MRS JUSTICE N MATTURI-JONES, JUSTICE OF APPEAL

COUNSEL:

E E C SHEARS-MOSES ESQ for the Appellant

S A BAH ESQ Ag DPP for the Respondent

JUDGMENT DELIVERED THE ~~8th~~ ^{11th} DAY OF MARCH, 2012.

1. The Appellant Ibrahim Bah, has filed a fresh Application for Bail pending appeal, dated 13 February, 2012. The Appellant was on 5 January, 2012 convicted of the offence of Receiving Stolen Goods, contrary to Section 33(1) of the Larceny Act, 1916 and sentenced to a term of imprisonment of 5 years, without the alternative of a fine. He is now serving his sentence at Central Prison, Pademba Road, Freetown. The Judgment was written by the Trial Judge, The Hon. Mr Justice S A Ademosu, now retired, but delivered by The Hon Mr Justice Katutsi in the Freetown High Court.
2. The Application is supported by the affidavit of Mr Abu Bakarr Dexter Bangura deposed and sworn to on 13 February, 2012. Exhibited thereto are, firstly, ABDB1 & 2 respectively, which are copies of the Notice of Appeal dated 9th January, 2012 and an amended Notice of Appeal dated 20 January, 2012. ABDB3, is a copy of a letter dated 20th January, 2012 written to the Medical Officer in charge, Central Prison, Pademba Road, Freetown, by Messrs Shears-Moses & Co, Solicitors for the Appellant. ABDB4 is a copy of a letter dated 1 February, 2012 addressed to the Appellant's Solicitors, by the Senior Medical Officer in charge, Sierra Leone Prison Service. It is this correspondence between Appellant's

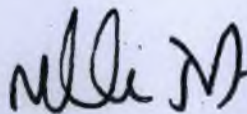
Solicitors and the Prison Doctor, which, Appellant's Counsel submits, entitles him to bring this Application for Bail to this Court for the second time. This argument is of such importance that we decided it should be dealt with at the outset before, if necessary, inviting arguments as to the merits of the Application itself.

3. At the time Mr Shears-Moses argued the first Application before this Court on 31st January, 2012, he had already written the letter exhibited as "ABDB3" In that letter he had already expressed concerns about the health of the Appellant. That was 11 days before that hearing. At that hearing, no mention was made of concerns about the Appellant's health, though, in truth, the Medical Officer's response only came back the day after, i.e. on 1st February, 2012. The concerns at that hearing were, to quote Mr Shears-Moses, *"that the Appellant's business and family will continue to suffer hardship as a result of the Appellant's conviction and sentence....and that admitting the Applicant to Bail will make him more useful for conducting his case in the supply of information and material"*. As regards the other issue canvassed in that hearing, I remarked in that Judgment that, *"as regards the issue of whether the Appellant would have served a substantial portion of his sentence before his appeal and determined, Mr Shears-Moses, has said very little."* So, it is not quite true that as of 31 January, 2012 when Mr Shears-Moses argued his Application before this Court, that the Appellant's health issues had not yet surfaced. His Solicitors had themselves raised it in their letter to the Prison Doctor, but not in this Court. The issue could have been raised in an additional or further affidavit, but that also, was not done. Now the Appellant wants a second bite at the cherry. We therefore posed the question to his Counsel as to whether this Court has jurisdiction to reverse its own decision made unanimously on 7 February, 2012.
4. Mr Shears-Moses has sought to draw a line in the sand between the reasons proffered in the affidavit supporting the earlier Motion, and which were dismissed by this Court unanimously, and those proffered in the present Application, as sufficient grounds for investing this Court with jurisdiction. What he is in effect saying, is that if this were an appeal, and the same was dismissed on one ground, he would be entitled to come again to this Court on another ground, and that this Court would be duty bound to hear him. As I kindly pointed out to him during the course

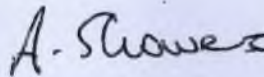
of argument, it is quite possible, theoretically, on a trial in the High Court, for a Judge who is not presiding over a criminal trial, to grant bail to an accused who has been refused Bail by the Trial Judge. That is the effect of Section 79(5) of the Criminal Procedure Act, 1965 which provides that: "*A Judge may, if he thinks fit, admit any person to Bail although the Court before whom the charge is pending has not thought it fit to do so.*" I say theoretically, because, the High Court, unlike the Magistrates' Court, is one and indivisible, and its Judges have co-equal jurisdiction. It is therefore unlikely that a Judge who is not presiding over a criminal case, would interfere with the exercise of discretion by the Trial Judge.

5. This Court is a creature of statute; it does not have the inherent jurisdiction which the High Court has. Unless the Constitution of Sierra Leone, 1991, the Courts' Act, 1965 and the Court of Appeal Rules, 1985 have provided for a particular factual or legal situation, this Court cannot grant just any relief sought by an Applicant. Any relief sought, must be authorised by these Acts and these Rules.
6. On 7 February, 2012 we dismissed the Appellant's Application for Bail. In that respect, we had given a final decision on an Application brought to us by the Applicant for him to be admitted to Bail. We cannot reverse that decision, nor can we vary it for any reason whatsoever. If this were a substantive appeal, it is possible during the hearing of the appeal, and not afterwards, and certainly, not after judgment, for the Court to Order the attendance of a witness pursuant to the provisions of Section 65 of the Courts' Act, 1965 and Rule 60 of the Court of Appeal Rules, 1985. In other words, fresh evidence could be led. In effect, this is what Mr Shears-Moses is asking this Court to do: that we must, after Judgment, receive further evidence that the Appellant is indeed entitled to Bail. Mr Shears-Moses has not cited to us any authority which permits us to rehear an Application made on supposedly fresh grounds (which, as I have highlighted above, were perhaps known to him at the relevant time), but pursuant to the same statutory provision, when an earlier Application made pursuant to that same statutory provision has been dismissed.
7. Our jurisdiction is circumscribed by the provisions of Section 129 of the Constitution of Sierra Leone, 1991 which states: "(1) *The Court of Appeal shall have jurisdiction throughout Sierra Leone to hear and determine,*

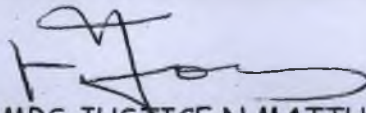
subject to the provisions of this Section and of this Constitution, appeals from any judgment, decree or order of the High Court of Justice or any Justice thereof and such other appellate jurisdiction as may be conferred upon it by this Constitution or any other law." We cannot, as it where, hear an appeal against our own decision after full argument. Nor can we set it aside for one reason or the other. On 7 February, 2012 we had decided to refuse the Appellant Bail pending appeal. That decision still stands. We do not think that there is any sound legal basis or argument for overturning that decision. For, irrespective of whatever colour or nomenclature Mr Shears-Moses attaches to his Application, this is what he is really asking this Court to do. We cannot do so; not necessarily for the reason canvassed by Mr Bah, the Acting DPP in his response when he referred to Section 128(3) of the Constitution which states that: *".... The Court of Appeal shall be bound by its own previous decisions and all courts inferior to the Court of Appeal shall be bound to follow the decisions of the Court of Appeal on questions of law"*, but because, we have no jurisdiction to hear an appeal against our own decision for whatever reason, be it fresh evidence or otherwise. We do not think it necessary therefore, to go into the likely merits of this Application. The Application dated 13 February, 2012 is therefore dismissed.



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



THE HONOURABLE MRS JUSTICE A SHOWERS, JUSTICE OF APPEAL



THE HONOURABLE MRS JUSTICE N MATTURI-JONES,
JUSTICE OF APPEAL