

IN THE COURT OF APPEAL OF SIERRA LEONE

ABDUL KARIM SERAY WURIE

(Administrator of the Estate of

Abdul KarimSerayWurie

(Deceased Intestate))

-

Plaintiff/Respondent

AND

**THE ATTORNEY GENERAL
& MINISTER OF JUSTICE**

-

1st Defendant/RESPONDENT

CHARLES F MARGAI

-

2nd Defendant/ Applicant

PRESIDING;

THE HON MR. JUSTICE REGINALD SYDNEY FYNN JA (SITTING ALONE)

Counsel;

C F Margai Esq. for the 2nd Defendant/Applicant

I S Yillah Esq. for the Plaintiff / Respondent

RULING delivered on 28th January 2016

1. This application seeks leave to appeal against the High Court ruling of 14th October 2015 in which the Hon Mrs. Justice Adeliza Showers JA (as she then was) had ruled *inter alia* that an application made by the 2nd Defendant/Applicant was unsuitable for disposal under the provisions of Order 17 of the High Court Rules 2007.
2. Being dissatisfied with that ruling the 2nd Defendant/Applicant applied to the court below to be granted leave to appeal against same. The 2nd Defendant /Applicant was refused leave to appeal. He now avails himself of the provisions of Order 10 of the Court of Appeal Rules and comes directly to this court to ask for leave to appeal against the ruling of 14th October 2015. (Both counsel in their submissions agreed that it is against the ruling of 14th October 2015 that leave to appeal is being sought even though the motion papers arguably read otherwise).
3. The facts and arguments before the court below leading to the decisions reached by that court are not up for consideration when contemplating whether are not to grant leave to appeal against those conclusions. Order 10 (2) of the Court of Appeal Rules sets out what an applicant should provide when he seeks leave to appeal; namely " *an*

affidavit setting forth good and sufficient reasons” and “by proposed good grounds of appeal which prima facie show good cause”.

4. The crucial questions to be answered in the consideration of this application therefore are i) whether the applicant has shown good and sufficient reasons and ii) whether there are good grounds of appeal. Where these are present the court will necessarily grant leave to appeal.
5. In support of the application is the affidavit of one R B Kowa Esq. sworn to on the 11th day of December 2015 with several exhibits attached (these will be referred to as found necessary). Counsel for the applicant submitted that he relies on this affidavit. Arguing that the exhibited proposed grounds of appeal (Exhibit F) are strong grounds and that on the whole the said affidavit shows sufficient cause.
6. The respondent did not file an affidavit in opposition but his counsel argued that it is for the court to decide whether the proposed grounds of appeal (Exhibit F of the applicant's affidavit) are substantial enough. He maintained that the two grounds set out on the said affidavit are both vague and lacking in specificity.
7. He submitted further that the ruling which is sought to be appealed against does not in any way prejudice any of the parties but only directs that the matter proceeds on trial. The respondent submitted therefore that the applicant will not be prejudiced if leave to appeal is refused by the court.
8. Counsel for the respondent also alluded to Rule 9(2) of the Court of Appeal Rules which in short provides that a ground of appeal which alleges that a judge erred on the law or misdirected himself must also set forth the particulars of such error or such misdirection. This is the correct position of the law and failure to comply with this rule according to Gelaga-King JA in Decker v. Decker (2002 unreported) would "lead to the automatic failure of any such ground of appeal".
9. The applicant's second ground of appeal alleges error in law as well as misdirection but alas it is not particularized and I take the view that proceeded with as is, it is sure to fail for the reasons already stated. As such I cannot find that that ground provides a good ground of appeal. Fortunately it is not the only ground advanced.
10. The applicant's first ground however in my opinion is specific in the terms of the error it alleges to wit: the learned judge's interpretation of the "suitability" requirement under Order 17 of the High Court Rules of 2007. There can be no doubt as to what this ground seeks. Prima facie it wants to approach this court for an interpretation of "suitability" which is different from that held by the judge below. It wants this court to find that the interpretation the judge below attached to "suitable" is wrong. I do not see any opacity here or any need for further specification.

11. This first ground appears to be the thrust of the appeal and prima facie it raises a good ground of appeal on which the applicant can sustain this appeal if leave is granted and even so without the other ground.
12. The nature of the proposed appeal, it being raised purely on an application based on law and not on the facts of the case I find that the seriousness of the legal question raised in the proposed appeal which the applicants affidavit describes as "begging for answers" provide enough good cause on which the application for leave can be sustained.
13. Submissions by counsel have thrown light on the fact that the question which is being raised is also laced with jurisdictional issues. I have therefore additionally asked myself; Would it not be a complete waste of precious judicial time if after a full blown trial it is found by the court below that it lacked jurisdiction to hear the case? Or worse still after a full blown trial, it is found on appeal by this court that the court below lacked jurisdiction to hear this case? I take the view that it is safer to settle the question now. The present proposed appeal gives this court the opportunity to lay the applicant's question to rest one way or the other and it is my opinion that it is just and prudent that the opportunity should be taken. This in my opinion provides further good reason for the appeal and I so hold.
14. As it is my opinion that the proposed appeal is advanced on a good cause and that at least one of the grounds is good and substantial enough to sustain said appeal it remains for me to consider whether a stay of execution of the ruling of 14th October 2015 is necessary in the circumstances.
15. In the event that a stay of the ruling of 14th October 2015 is not be granted whilst leave to appeal is granted it seems to me that an absurd situation might arise wherein the trial will be proceed with below whilst crucial questions which would otherwise impact said trial will be up for discussion and decision before this court. Counsel on either side have submitted that a stay in these circumstances ought to be granted in the event that leave to appeal is. I have found no reason to disagree with this position.

I therefore:

- a) grant the applicant leave to appeal against the ruling of Hon Mrs. Justice Adeliza Showers JA (as she then was) dated 14th October 2015 and
- b) order that the ruling of the Hon. Mrs. Justice Adeliza Showers dated 14th October 2015 is hereby stayed pending the hearing and determination of the appeal.
- c) I make no order as to costs



..... The Hon. Mr. Justice Reginald Sydney Fynn JA