

CR APPS 10, 11 & 12/2014

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN: DR MAGNUS KEN GBORIE

DR EDWARD MAGBITY

AND

LANSANA ROBERTS

- APPLICANT

AND

THE STATE

- RESPONDENT

CORAM:

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE

JUSTICE OF THE SUPREME COURT

THE HONOURABLE MR JUSTICE A S SESAY, JUSTICE OF APPEAL

THE HONOURABLE MR JUSTICE J B ALLIEU, JUSTICE OF APPEAL

COUNSEL:

A S SESAY ESQ, B KOROMA ESQ & S A MANS CONTEH, ESQ for the  
Applicant

C MANTSEBO ESQ for the Respondent

RULING DELIVERED THE 10<sup>TH</sup> DAY OF FEBRUARY, 2017

1. The Applicant herein, Lansana Roberts, has applied to this Court by way of Notice of Motion dated 27 January, 2017, for the following Orders: The first one is no longer necessary because of the lapse of time between filing and hearing of the Application. The other 3 are
  - i. That this Honourable Court grants an order that the Applicant be allowed to travel outside the country for medical treatment.
  - ii. That this Honourable Court Orders the release of the Applicant's passport to him, so as to enable him to travel.
  - iii. That this Honourable Court grants him any further Order it may deem fit.



The application for Costs in the cause is inappropriate as the substantive matter is a criminal appeal, and not a civil cause at first instance; there is therefore no "*cause*" to speak of.

2. The Application is supported by the two affidavits deposed and sworn to by the Applicant on 27 January, 2017 and on 6 February, 2017 respectively. The second one was filed in response to a request by the Court at the first hearing that the Applicant provide affidavit evidence of the terms of bail granted by a member of this panel, SESAY, JA (then SESAY, J) in 2014.
3. In his first affidavit, the Applicant deposes to his medical condition - he is suffering from a chronic eye defect, and he has been advised that he needs medical treatment abroad as the same is not available in Sierra Leone. As his appeal to this Court has not yet been determined, and as his bail terms demand his constant presence in Sierra Leone, he cannot obtain this treatment without an Order of this Court. He has also exhibited documents which show that he has a stable family life here in Sierra Leone; that he is financially stable; and that he has real properties which should provide adequate security at all times, and be available to the Court should he fail to return for Judgment. He has also exhibited documents showing that he is a tax payer and that he is up to date with his tax obligations. He deposes further that since being granted bail, he has not once flouted the conditions attached to the same.
4. In his second affidavit, the Applicant has also exhibited several documents. The first, is the Ruling on his bail application before SESAY, J (as he then was) now JA, on 11 November, 2014. One of the conditions imposed was that he surrenders his passport to the Master and Registrar; this was done. He was also Ordered to report three days a week to the Master and Registrar until his appeal is determined; this he has been doing as is shown in his exhibit "LSMR 17 (1 -30)". He was also restrained from leaving the country without an Order of Court. The Court confirmed that he had paid his fine in full, which is of importance in an application of this nature. But his sentence to a term of imprisonment has been held in abeyance by that Court's Order.
5. The Applicant deposes further that if he is permitted to travel, he will either go to the United States of America, or, to the United Kingdom, and he has deposed to addresses where he will be staying in both countries.



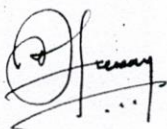
6. It is clear that this Application has only arisen because this Court has not yet delivered judgment in the Applicant's appeal. This will be done on a date to be communicated to both sides, by the Registrar. If judgment had been given one way or the other, this Application would not have been necessary. The primary consideration it seems to us, is whether, firstly, we accept that the Applicant does indeed require medical treatment abroad, and which is not available in Sierra Leone. We accept that his condition may be of a serious nature; it is not easy to judge the seriousness however; but it would be unfair for this Court to take chances here, with the possibility that if he is not given the opportunity of seeking medical treatment abroad, his eyesight may become seriously impaired. We are prepared to err on the side of caution, rather than take a risk with someone's good health.
7. But even if we are not minded to trifle with the Applicant's present medical condition, we must be certain about his final destination before we can allow him to leave these shores. During the course of argument, Mr Sesay pointed out to us that travelling to either of the countries identified by the Applicant requires a visa. As his passport is with the Court, the Applicant is not presently in a position to tell which of the two selected countries he will be allowed to enter. This is quite reasonable, and it is an issue and/or a concern which Mr Mantsebo, Counsel for the State has himself brought up in his answer to the Application. We cannot obviously give the Applicant a blanket approval to travel. This will not be sensible. What we can do is to give him back his passport, grant him leave to apply for a visa to enter both countries, or either country, and order that he comes back to us when he had been granted such a visa, for final permission to travel. This is what we now do.
8. The Orders of the Court are as follows:
  - i. This Honourable Court Orders the Master and Registrar (or any other person or authority in possession of the Applicant's passport) to release to the Applicant herein, Lansana S M Roberts, his passport, for the sole purpose of enabling the said Applicant to apply for a visa to visit either the United States of America, or, the United Kingdom.



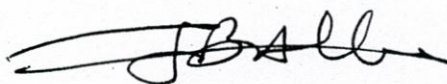
- ii. The Applicant shall come back to Court for further relief after he has obtained the said visa for the Court's approval to travel out of Sierra Leone.
- iii. There shall be no Order as to Costs as this is an application in a criminal proceeding.



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE JUSTICE OF THE  
SUPREME COURT



THE HONOURABLE MR JUSTICE A S SESAY, JUSTICE OF APPEAL



THE HONOURABLE MR JUSTICE J B ALLIEU, JUSTICE OF APPEAL