MISC. APP 10/22 2022

IN THE COURT OF APPEAL OF SIERRA LEONE

(CIVIL DIVISION)

BETWEEN:

MIRA HUBALLAH	-1ST APPLICANT
ZINA HUBALLAH	-2ND APPLICANT

(Both jointly as Trustees for the
Beneficiaries of the estate of
MALIK HUBALLAH(DECEASED)
15 LUMLEY STREET
FREETOWN

AND

ALIMAMY FOFANAH	- 1ST RESPONDENT
SHEKOU KAMARA	- 2ND DEFENDANT
SIMEON SMITH	-3RD RESPONDENT

11 Lumley Street
Freetown

ALHAJI MOHAMED BOBO BAH	-4TH RESPONDENT

Regent Road
Freetown

E.T. KOROMA	**-COUNSEL FOR THE APPLICANTS**
A. MARAH	**-COUNSEL FOR THE 4TH RESPONDENT**

RULING DELIVERED BY THE COURT OF APPEAL ON THE 20TH JULY 2023.

The Applicant approached this court by notice of motion dated 26th May 2022 praying for the following;

1. That this courts grants an interim stay of proceedings and execution of the ruling dated 22nd February 2022 delivered by the Honourable Justice N.C. Browne-Marke JSC pending the hearing and determination of this application.
2. That this honourable court enlarges the time within which to seek leave to appeal against the ruling dated 22nd February 2022 delivered by the Honourable Justice N.C. Browne-Marke JSC to the court of appeal.
3. That this honourable court grants leave to the Applicant herein to appeal against the ruling dated 22nd February 2022 delivered by the Honourable Justice N.C. Browne-Marke JSC to the Court of Appeal.

4. That if orders 2 and 3 are also granted, that this honourable court grants a stay of proceedings and or execution of the said ruling pending the hearing and determination of the said appeal.
5. Any further order(s) that this honourable court may deem fit and just.
6. That the cost of this application be cost on the cause.

Counsel for the applicant moved the court on his application. In the process, counsel for the Respondent indicated that he wishes to raise and rely on a preliminary objection on the basis that this court lack jurisdiction to hear this current application.

Counsel for the Respondent objected on the ground that the ruling sought to be appealed against was not a final judgement. As such appeal is not as of right. The leave of the High court needs to be sought before the expiration of 14 days before any such appeal could be filed pursuant to Rule 10 (1) of the Court of Appeal Rules 1985. Where the said period of 14 days lapses without such application being made in the High Court, the Applicant is at liberty to approach the Court of Appeal within a further period of 14 (fourteen) days for an enlargement of time within which to approach the High Court for the said leave to appeal against the ruling of the High Court pursuant to Rule 10 (4) of the Court of Appeal Rules 1985. Counsel submits that `both 14 day periods for leave to appeal and for an enlargement of time within which to seek leave to appeal have lapsed without the leave or enlargement of time within which to seek leave being sought. That in view of these lapses in time, this court lacks jurisdiction to entertain this application of 26th May 2022.

Counsel argues that the right to approach the Court of Appeal is only triggered by a refusal by the High Court. He submitted that even when the Applicants are out of time, they should first approach the High Court for an enlargement of time and only when the High court refuses this application can the applicant approach this court for enlargement of time.

Counsel referred this court to the case of **Nigerian National Shipping lines v Abdul Ahmed (Trading as Abdul Aziz Enterprise) S.C Civ. App. No. 3/88 pg. 55-97** and the ratio of Lord Atkin in the Privy Council in the case of Ohene Moore v Akesseh Tayee (1933) A.C. 972 cited by Kutubu JSC where the learned Judge held;

> *"It is quite true that their Lordships as every other Court attempt to do substantial justicia and to avoid technicalities but their Lordships like any other Court are bound by the Statute law, and if the Statute law says there shall be no jurisdiction in a certain event and that event has occurred then it is impossible for their Lordships or for any other Court to have jurisdiction".*

Like the learned Kutubu JSC, I must also make haste to state that this authority was delivered not on the extent of time but failure to fulfil certain requirement requisite for the purposes of an appeal.

By this quote, I understand counsel to be arguing that since the statutory period to seek leave and for enlargement of time within which to seek leave has lapsed, this court therefore lacks jurisdiction to hear any application for an enlargement in this regard. He submitted that this court cannot exercise a discretion to enlarge time because there is no rule for the exercise of such discretion and that even when the applicant is out of time, the High Court has the power to enlarge time but that power to enlarge time cannot be exercised by the Court of Appeal unless there has been an application and a refusal by the High Court.

Counsel for the Applicant opposed the objection and maintains that this court does have jurisdiction to hear and determine the present application. He maintains that contrary to the argument of counsel for the Respondent, when it comes to applications for enlargement of time, be they interlocutory or final, it is the court of appeal that has jurisdiction and not the High Court. As such considering that the time for seeking the leave of the court to appeal has lapsed, the application for the enlargement of time can only be made before the court of appeal.

Counsel for the applicant further admits that the time limited within which to make an application for enlargement of time before this court has elapsed. However, he argues that this notwithstanding, this court is not deprived of jurisdiction to hear and determine and application for enlargement of time. A number of cases were referred to in this regard to show that the where there is a lapse in the time limited within which to seek leave for time to be enlarged, the doors are not rendered shut in the face of the applicant. That this court in such an instance must take the interest of justice into consideration. For this assertion counsel relied on the case of **Santigie Fofanah v Isatu Fofanah (2015) SLCA 16 dated 30th November 2016** and **Mohamed Musa King v Arnold Bilson Nylander Misc. App. 2 of 2006** among others. That in the present case, the applicants have approached this court basing their application on the interest of justice. In **Santigie Fofanah v Isatu Fofanah (2015) SLCA 16 dated 30th November 2016** this court cited and relied on the case of **Devenaux v Kamara (2014) (unreported)** where the supreme court approvingly quoted the dictum of **Tholla-Thompson in Ibrahim A.N. Basma v Adnan Youseff Wansa (unreported)** where he stated;

> *"Procedural rules are intended to serve as hand maiden of justice and not to defeat it, and invoke the court's discretionary power to waive strict application of the rules, in order to ensure that the parties have a fair opportunity to argue their case in the Supreme Court".*

In reply, counsel for the respondent argued that the authorities cited by the applicant specifically the case of **Santigie Fofanah v Isatu Fofanah (2015)** were made pursuant to Rule 11 (6) of the Court of Appeal Rules and therefore cannot be applied in the present instance. Further he argued that the Applicant have not invoked the jurisdiction of this court pursuant to Rule 10 of the Court of Appeal Rules and that a discretion based on the interest of justice cannot be exercised outside the law.

There is no question that the Applicant ought to have approached the High Court within 14 days from the date of the ruling sought to be appealed against but that this time lapsed and the applicant did not file the application. There is also not question that where there is failure to make the said application within 14 days thereof, the Applicant can seek for an enlargement of time within which to approach the court. The question at this stage is which court should the applicant make the application for enlargement of time. The Respondent by this preliminary objection maintain that the Applicant must approach the High Court in that circumstance. That unless the application is refused by the high court, this court lacks jurisdiction to hear the present application. The Applicant argues otherwise. This issue as we know it has been settled and there are a number of authorities in this jurisdiction on the issue. In the case of **Alice Kenny and Others v Osman Mansaray Civ. App. 18/2004** this court held that;

> *"Where for any reason a person is desirous to appeal to the Court of Appeal runs out of the statutory period of doing so, only the Court of Appeal can extend the time and grant him leave to do so. The High court is only entitled to grant leave to appeal within the statutory period and no more".*

This clearly brings into perspective the position of the law on this issue. Strictly speaking, the jurisdiction of the high court effluxes after judgment or where it is not final, after a ruling on that specific issue. All other authority it exercises subsequently on the matter or the issue has to be a creature of statute which must be interpreted strictly. The role of the High court with respect to leave to appeal and enlargement of time is purely statutory. Where the period granted by statute expires, it takes with it all subsequent authority it might have exercised during the statutory period granted.

Counsel for the applicant have approached this court because as he puts it, the time limited for seeking the leave of the high court to appeal has lapsed. He cannot approach the high court on the issue any longer because it has become functus. Where he seeks a remedy of whatever sort in that matter, he can only approach this court. I also place heavy reliance on the dictum of Justice M.E. Tolla-Thompson (cited above) read together with the decision of this court in the case of **Alice Kenny and Others v Osman Mansaray Civ. App. 18/2004** and state that the applicant could only have approached this court and accordingly this court is cloaked with jurisdiction to hear and determine the present application.

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I find that the Trial Judge was right in making a declaration in favour of the Respondent as claimed in the Counterclaim. The date of her purchase of the land and the registration of her conveyance was never challenged. It has been established in a long line of cases that in an action for a declaration of title the plaintiff must succeed on the strength of his own title and not on the weakness of the defendant's title. The onus lies on the plaintiff to satisfy the Court that he is entitled on the evidence brought by him to a declaration of title. In this case the Respondent in her Counterclaim satisfied the Learned Trial Judge that she is entitled to the declaration claimed.

It is an established principle of law that an Appellate Court will not readily disturb the findings of facts of the Trial Court, unless the facts do no support the findings of the Trial Court or findings have violently contravened a principle of law, or the findings are contrary to the facts or the facts have not been evaluated.

In my view the Trial Judge evaluated the facts adequately before his findings. I have reviewed the whole evidence carefully and hold that on a balance of probability the Respondent has established that she is the owner of the property situated at New Freetown/Waterloo Road Power Magzine Kissy Freetown in the Western Area of Sierra Leone. The Appellant's claimed is therefore dismissed.

In view of what I have said above, I hold that there are no merits in the Appellant's Grounds of Appeal. In the premises the appeal fails and I order as follows:

1. The Appellant's appeal is dismissed;
2. The Judgment of the High Court is confirmed;
3. The Respondent's Counter Claim succeeds;
4. The Respondent is entitled to recover possession of the disputed land from the Appellant as claimed in her Counter-Claim;
5. The Respondent is to have this cost of this appeal. Such cost to be taxed.

S Bash Taqi – 26/03/08
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HON MRS S BASH-TAQI, JSC

I AGREE..
HON. MS S. KOROMA, JSC

I
AGREE..
HON. MR. JUSTICE E. E. ROBERTS, JA