

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

ABU BAKAR KASSIM BANGURA  
34 BASSA TOWN  
FREETOWN.

- APPLICANT

VS.

ISATU BOIE KAMARA  
(ADMINISTRATRIX OF THE ESTATE OF  
ALHAJI USMAN BOIE KAMARA)  
116 WILKINSON ROAD  
FREETOWN.

- RESPONDENT

BEFORE THE HON. MR. JUSTICE JOHN BOSCO ALLIEU, J.A.

RULING DATED THE 13 DAY OF FEBRUARY 2024.

COUNSEL:

E. T. KOROMA ESQ. FOR THE APPLICANT  
O. JALLOH ESQ. AND I WILLIAMS ESQ. FOR THE RESPONDENT

RULING

I

The Notice of Motion dated 14<sup>th</sup> November 2023 sought to be moved by E.T. Koroma Esq., Counsel for the Applicant herein, was objected to by O. Jalloh Esq., Counsel for the Respondent, on Jurisdictional grounds. Inviting this Hon. Court's attention to "EXABK9" attached to the Notice of Motion dated 14<sup>th</sup> November 2023, O. Jalloh Esq, Counsel for the Respondent, submitted that the Application based on enlargement of time and the other Orders prayed for on the face of the said Notice of Motion cannot be made before this Hon. Court without first having been made in the High Court.

According to him, the Application ought to have been made in the High Court and if there is refusal of same, then, the Applicant would have been at liberty to come before this Hon. Court. He made reference to Rules 10(1) and 64 respectively of the Court of Appeal Rules 1985. He submitted that an Order dated 2<sup>nd</sup> August 2023 was granted by Hon. Justice Wright J. and there is nothing before this

Hon. Court that the Applicant had applied to the Court below and the same was refused. Unless this is done, this Hon. Court does not have Jurisdiction and prayed that the Application be struck out with significant costs.

## II

Responding to the objections raised by Counsel for the Respondent, E.T. Koroma Esq, Counsel for the Applicant, submitted that Rule 10(1) of the Court of Appeal Rules 1985, relied upon by Counsel for the Respondent, is no longer operational as it has been amended by Constitutional Instrument No. 1 of 2003.

He referred to the case intitled **Misc. App. 10/22, In the Court of Appeal of Sierra Leone (Civil Jurisdiction) between Mira Huballah and Zina Huballah – Applicants And Alimamy Fofanah, Shekou Kamara, Simeon Smith and Alhaji Mohamed Bobo Bah – Respondents.**

He submitted that similar facts arose in that matter as in this one now pending before this Hon. Court. The decision of the Court of Appeal been sacrosanct, he further submitted that this Honourable Court has the requisite Jurisdiction to hear and determine an Application of such. According to him, the objections raised have no legal efficacy and should therefore be overruled entitling him to whatever minimal costs, preferably Le30,000/00 (Thirty Thousand Leones).

## III

In his reply, Counsel for the Respondent, O. Jalloh Esq, referred to the case of **Nigeria National Shipping Lines Vs. Abdul Ahmed (Trading as Abdul Aziz Enterprise) S.C. Civ. App. No. 3/88 (unreported), Judgment of the Supreme Court of Sierra Leone delivered on 17<sup>th</sup> February 1989.**

He argued that the case of the Judgment of the Court in the case he referred to is that where there is an Application for an extension of time, the purport of Rules 10(1) and 64 of the Court of Appeal Rules



1985 in that approach should first be made in the High Court and resort can only be in the Court of Appeal when there has been a refusal.

Referring to Constitutional Instrument No. 1 of 2003, he submitted that a close reading of Rule 10(1), Court of Appeal Rules 1985, does not affect his objections; rather it confirms it in the following phrase “Unless the Court below enlarges time”. In the same vein, Rule 64 of the Court of Appeal Rules 1985 is not affected by his objections as it acknowledges amended Rule 10 (1) of the said rules which placed emphasis to first seek resort in the High Court before coming to the Court of Appeal.

Referring to the Huballah case cited to Counsel for the Applicant, Counsel for the Respondent submitted that, that case does not displace the Judgment of the Supreme Court in the Nigerian National Shipping Lines case and that this Hon. Court is bound by the Judgment of the Supreme Court by virtue of Section 128(3) of the Constitution of Sierra Leone 1991. In effect, the Huballah case does not change the Law in Sierra Leone as the same is a Court of Appeal decision.

#### IV

I find it necessary and appropriate, at this stage, to set out Rule 10(1) and Rule 64 respectively of the Court of Appeal Rules 1985.

**Rule 10(1) states:**

“Where an Appeal lies by leave only, any person desiring to Appeal shall apply to the Court below or to the Court by Notice of Motion within fourteen days from the date of the decision against which leave to Appeal is sought unless the Court below or the Court enlarges time.”

Rule 64 states:

“Except where otherwise provided in these rules or by any other enactment, where any application may be made either to the Court below or to the Court, it shall be made in the first instance to the Court below, but if the Court below refuses the Application, the Applicant shall be entitled to have the Application determined by the court.”

By virtue of Rule 10(1) both the High Court and the Court of Appeal have concurrent Jurisdiction in the matter of Application to these Courts for leave to Appeal for enlargement of time.

Rule 64, however, provides that the Application must first be made to the High Court and on refusal, to the Court of Appeal for determination.

In the case of Nigerian National Shipping Lines Vs. Abdul Ahmed (Trading as Abdul Aziz Enterprise) S.C. Civ. App No. 3/88, Kutubu J.S.C. citing the case of Ohene Moore Vs. Akessch Tayee (1933) A.C. 972, the ratio of Lord Atkin in the Privy Council 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”

It must however be noted that this Authority was delivered not on the extent of time but failure to fulfill certain requirements requisite for the purposes of an Appeal.



Even the decision of this Court for an extension of time within which to Appeal in Misc. App. 6/2020 between **Kadija Olamatu Sesay – Appellant/Applicant Vs. The State – Respondent/Respondent** was refused on the grounds that the Application was made in breach of Rule 64 thereof.

All of the aforesaid highlights the strict application of Rule 10(1) ad Rule 64 respectively of the Court of Appeal Rules 1985.

## V

However, a recent decision by the Court places emphasis that the interest of Justice must be taken into consideration and the door should not be rendered shut in the face of Applicants where there is a time lapse within which to seek leave for time to be enlarged. See Misc. App 10/22 **Mira Huballah and Zina Huballah Vs. Alimamy Fofanah, Shekou Kamara, Simeon Smith and Alhaji Mohamed Bobo Bah – Respondents (unreported)**

In the above mentioned case, certain cases were cited and relied upon, for instance, the case of **Santigie Fofanah Vs. Isatu Fofanah (2015) SLCA 16 dated 30<sup>th</sup> November 2016(unreported)** wherein the Court also cited and relied on the case of **Devenaux Vs. Kamara (2014) (unreported)** where the Supreme Court approvingly quoted the dictum of Tolla-Thompson J.A. as he then was, in **Ibrahim A.N. Bassma Vs. Adnan Yousef Wanza (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”**

Further, in the case of **Alice Kenny and others Vs. 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.”

Justice Umu Tejan-Jalloh, C.J. opined

“Clearly an Application for extension of time within which to Appeal to the Court of Appeal made to the trial Judge 15 months after the decision to Appeal was both out of time and made in the wrong forum. It is the Court of Appeal which has jurisdiction to enlarge the time as provided for in Rule 11(1) of the Court of Appeal Rules 1985. In my Judgment therefore the Court of Appeal was right when it held that “only the Court of Appeal can extend the time and grant leave to do so. The High Court is only empowered to grant leave to Appeal within the Statutory period allowed for appealing and no more.”

Another persuasive authority on the strict enforcement or otherwise of the Court Rules cited is found in the case of *Moses Kindowa & The Director SLADA 3<sup>rd</sup> Education Project Vs. Aureol Tobacco 7/93 COA* (unreported) where Justice Gelaga-King J.A. (as he then was) sated:

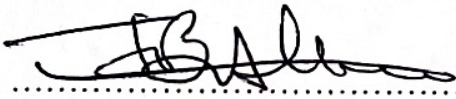
“In my Judgment, the provision of that section do not mean and cannot mean that the practice and procedure of the Courts must be regulated in such a manner as to defeat its ultimate purpose which is to ensure that Justice is dispensed in a fair organized, simple, speedy, effective, civilized and just manner. It is for this laudable reason that it has been the practice in Commonwealth Jurisdictions that whenever the Court is satisfied that substantial Justice requires.....(it will).....dispense with the strictness of its own rule except where a matter is directly regulated by an Act of Parliament or Decree as the case may be.”



VI

Placing heavy reliance on the authorities quoted in the preceding paragraph, I hold that the Applicant could only have approached this Court and accordingly this Court is cloaked with Jurisdiction to hear and determine the present Application.

The objections raised are hereby accordingly overruled



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HON. JUSTICE JOHN BOSCO ALLIEU, J.A.