

MISC APP 58/12

2012

B No. 11

IN THE HIGH COURT OF SIERRA LEONE

BETWEEN:

IBRAHIM BARRIE

- APPLICANT

AND

THE INSPECTOR-GENERAL OF POLICE - RESPONDENT

COUNSEL:

S T G SAQUEE-KAMANDA ESQ for the Applicant

MS KAINWO, State Counsel for the Respondent

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE

JUSTICE OF APPEAL

JUDGMENT DELIVERED THE 25th DAY OF MAY 2012.

1. By Notice of Motion dated 10 February, 2012 the Applicant, Ibrahim Barrie has applied to this Court for a transfer of proceedings in respect of Magistrate's Court case file CS7792/11 pending before His Worship Steven Conteh, Principal Magistrate in Court No.1, to any other Magistrate's Court for determination therein. He is also asking for a stay of those proceedings until this Application is determined; and for any further or other Order. Due to certain matters deposed to in the affidavit in support of the Application, I had cause to Order a stay of the proceedings before His Worship Mr Conteh, at the first hearing on 22 February, 2012.
2. The Application is supported by the affidavit of the Applicant deposed to and sworn to on 10 February, 2012. Exhibited to that affidavit are the following documents: "A" is a copy of the Police charge sheet; "B" is a copy of the record of the proceedings in Court No.1; "C" is another copy of those proceedings, highlighting certain discrepancies in the Learned Magistrate's minutes. In his affidavit, the Applicant has deposed to the following matters: On 18 October, 2011 he was invited by the police to answer to an allegation made against him at the Anti-Robbery Unit office, at Regional West Headquarters of the Sierra Leone Police, at Bath Street, Freetown. His premises were searched, but nothing of police interest was found. He was detained by the police for four days. On 26 October, 2011 he was charged to Court - see exhibit A, with the offence of Simple Larceny contrary to Section 2 of the Larceny Act, 1916. The

particulars of that offence are that on Friday 6th May, 2011 at 4c Salt Pond, Juba Hill, Freetown, the accused stole the sum of USD4,000 then equivalent to Le27,600,000, property of Mohamed Basra Massaquoi. He was duly arraigned that same day, i.e. 26 October, 2011, before the Learned Magistrate, who proceeded to hear evidence from the complainant, Mr Massaquoi, and to release the Applicant on bail.

3. On 20 January, 2012 Applicant's Counsel, Mr Saquee-Kamanda made a No-Case submission to the Learned Magistrate. On 31 January, 2012 the prosecuting police office replied to this submission. Purportedly, on 2 February, 2012, the Learned Magistrate ruled that the Applicant had a case to answer. Applicant's Counsel was not in Court. The case was adjourned to 6 February, 2012. On 3 February, 2012 the Applicant made a photocopy of the Court's record, exhibit B, for use by his lawyer. 6 February, 2012 was a public holiday and so the case was not called up. On the next sitting day, 7 February, 2012 both Applicant and one of his Counsel requested a hearing date for 13 February, 2012, but the Learned Magistrate, adjourned the case, in open Court to the next day 8 February, 2012 on which date, he was found guilty of the offence charged, and sentenced to 6 months imprisonment without he having been given an opportunity to present his defence.
4. He was taken to the Court's holding cell, but later released by a police officer and told to go home and to come back to Court on Monday 13th February, 2012.
5. On 9 February, 2012 Applicant made another photocopy of the Court's record, exhibit C, so as to enable his lawyers to file an appeal on his behalf. This copy did not reflect the judgment pronounced in open Court. There were discrepancies between pages 33 and 34 in both copies. As such, he had lost confidence in that Court and wished his matter to be transferred.
6. In view of the serious allegations made by the Applicant in his affidavit, on that first day of hearing, I Ordered a stay of the proceedings before Magistrate Conteh. Before doing so, I had made the following observations which are recorded on page 1 of my minutes: "*On looking through the exhibits, it appears page 34 of the Court record has been duplicated but with different entries. On one of them, there are the words "Adj 06-02-12", with the signature of the Magistrate underneath.*"

On the other page 34, there are entries for 6/02/12 a public holiday, 7/02/12 and 8/02/12. On 8/02/12 it appears the matter was adjourned to 13/02/12. On 13/02/12 Mr Saquee-Kamanda claims judgment was delivered and his client convicted. He was taken to the cells, but later released. The whole situation is unclear, but the allegations are of a serious nature. I ORDER that the original Court file C/S 7792/2011 between the Inspector-General of Police and Ibrahim Barie be forwarded to this Court immediately for inspection and comparison with the copies exhibited to the Applicant herein's affidavit as "B" and "C". All further proceedings in this case are stayed until further Order." I adjourned the hearing to 24 February, 2012.

7. At the hearing on 24 February, 2012, Ms Kainwo appeared for the Respondent. I made the following observations as recorded on page 2 of my minutes: " I have looked through the original case file CS 7792/2011. It now appears that judgment was given against the accused on a date not stated. The judgment is to be found on pages 34-39 of the Court file. On page 39 the Magistrate states, inter alia, "matter stayed pending outcome of Application" presumably the Application herein. The Court record suggests there has been some irregularity in the proceedings. I shall study the file again and give a decision on the Applicant's Application. Clearly, a transfer cannot be granted at this stage. But the injustice manifest at the end of the proceedings cannot be allowed to continue. The Applicant is released unconditionally on bail till a final decision is given by this Court." Ruling was then reserved.
8. This Application, and the original Court file which I examined, disclose several troubling features, one of them being the 'doctoring' of Court records. The trial had not come to an end because, on dismissing the no-case submission made on behalf of the Applicant, the next stage would have been for the accused to be called upon to present his defence as provided for in Section 103 of the Criminal Procedure Act, 1965 - CPA, 1965. A summary trial was being conducted as the Applicant's plea was taken on 26 October, 2011 as recorded by Magistrate Conteh on page 1 of his minutes. The Court ought not to have made a pronouncement on the Applicant's guilt, at that stage.
9. In order to show what exactly happened, I shall here set down what was recorded in the original file by Magistrate Conteh on page 33 et seq. On 1

February, 2012 he minutes that "*I have considered the submission of counsel and the reply thereto by the prosecution. From the evidence adduced I hold that the accused has a case to answer. The submission of counsel is hereby dismissed. Adj 06 -02 -12.*" The Applicant claims this proceeding actually took place on 2 February and not 1 February, as noted by the Learned Magistrate. In fact, on page 32 the Learned Magistrate did adjourn to 02-02-12. It is strange therefore, that the case was actually called the day before this particular day. However, once he had dismissed Counsel's submission in open Court, the next stage would have been to proceed in accordance with Section 103 of the CPA, 1965. Monday 6 February, 2012 the adjourned date, was indeed a public holiday, but the Learned Magistrate minutes as follows on page 34: "*Case called. Accused present. ASP Konneh pros. S Kamanda for accused absent. S S Thomas assoc. Adj 07-02-12.*"

10. On the same page 34, there are the following minutes: "*07-02-12. Case called. accused present. ASP Konneh pros. S Kamanda fo acc absent. File withdrawn for judgment. Adj 08-02-12.*" The procedure laid down in Section 103 of the CPA, 1965 was not followed. Instead, at the bottom of the page, there are the following minutes: "*Judgment: "The accused is charged on one count of larceny contrary to section 2 of the Larceny Act, 1916...."* The judgment continues onto page 38 where it ends: "*....I therefore find the accused guilty of the offence charged. I Order exhibits C, D, E, F 1 & 2 to be restored? to complainant. Sentence of Court: accused to serve 6 months in prison.*" There was no allocutus taken, nor was a plea in mitigation of sentence entertained by the Court. Now, if this trial had ended in the way suggested by the minutes on page 38, there would have been no need to call up the matter again on any other date. But I have found that on a page apparently numbered 39 through which the number 35 is discernible, that the Court sat on 13 February, 2012. That was when the matter was stayed by the Magistrate pending the outcome of Applicant's Application herein.
11. The problems do not end there. In the copy of the Court record exhibited as page 33 of exhibit B, it is clear that it is different in many respects when compared with that found in the original case file. For a start, there is no adjourned date at the bottom of the page 33 in exhibit B. Rather, the adjourned date is found at the back, on page 34 which

apart from the adjourned date, is blank. Also, a study of the entries on page 33 in the original case file and in exhibit B, show that they are not identical, though they were all written by the Learned Magistrate. Exhibit B ends at the same page 34, whilst exhibit C and the original case file end at page 39. Also, though page 34 on both exhibit C, and the original file contain entries for 7 February, 2012, they are clearly different. There is a deletion said to have been made that same day, in exhibit C, which does not appear in the original file. Also, page 34 in exhibit C ends with an entry for 08-02-12 when the matter was supposedly adjourned to 13-02-12; but page 34 in the original file ends with a judgment. I suspect this has something to do with why the number 39 on page 39 in the original case file was obviously written over the number 35.

12. These are all troubling findings; but the more troubling issue, is what should be done by this Court to rectify the irregularities manifest in the record of the Court below. The Applicant has not come to this Court for Judicial Review; nor has he come by way of Case Stated. Nor is this Application an Appeal against the Judgment of the Learned Magistrate. The things this Court can do are therefore limited. In view of what I have found out, I cannot properly send the case back to the same Court, as by his own lights, Magistrate Conteh has not only overruled the No-Case submission passed on the Applicant, but has also, in utter contravention of express provisions of the Law, proceeded to find him guilty. The strange feature, is that having found the Applicant guilty, and having sent him to Prison for 6 months, the Applicant was more or less immediately released from detention in the Court's cell.
13. I think the best this Court can do is to grant the Applicant an extension of time within which to apply for Judicial Review of Magistrate Conteh's decision of 8 February, 2012, or, of any other date which may be applicable. Ordinarily, such an Application must be made within 3 months of the decision in respect of which there is a complaint - see Order 52 Rule 3(1) of the High Court Rules, 2007. But the delay in doing so has been no fault of the Applicant. Also, though such an Application is not an appeal, I shall treat it as such for the purposes of Bail and thus apply the provisions of Section 43(1) of the Courts' Act, 1965. This may not really be necessary as the Applicant has himself stated in his affidavit that he

was not taken to Prison on the day of his sentence, and for all I know, he is still at liberty. For these reasons, I cannot also Order a transfer of the matter, as there is nothing to transfer.

14. I shall therefore make the following Orders:

- i. The Application for a transfer of case file CS 7792/11 from Magistrate's Court No.1 to any other Magistrate's Court, is refused.
- ii. The Applicant is admitted to Bail unconditionally, and in his own recognisance.
- iii. No further proceedings shall be taken in Magistrate's Court No.1 in respect of C/S 7792/2011, nor, should the sentence imposed by that Court on the Applicant be enforced unless and until the same is confirmed by this Honourable Court.
- iv. The Applicant is granted an extension of time within which to file an Application for Judicial Review, such Application to be brought within 14 days of today's date.
- v. There shall be no Order as to Costs as this is an Application in criminal proceedings.



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE