

S.C. CR. APP. NO. 1/76

IN THE SUPREME COURT OF SIERRA LEONE

CORAM:

The Honourable Mr. Justice C.O.E. Cole - Chief Justice

The Honourable Mr. Justice E. Livesey Luke Justice of the  
Supreme Court

The Honourable Mr. Justice C. A. Harding - Justice of the  
Supreme Court

The Honourable Mr. Justice O.B.R. Tejan - Justice of the  
Supreme Court

The Honourable Mr. Justice K.E.O. During - Justice of Appeal.

THE STATE - APPELLANT

Vs.

IRENE YOUNG  
JOSEPH KOROMA  
SAMUEL FOWLER - RESPONDENT

M.S. Turay, Esq., Solicitor General with him Bankole  
Thompson, Senior State Counsel and Mr. Koroma, State  
Counsel for the State.

J.H. Smythe Esq., Q.C. with him Mrs. H. Ahmed for the  
1st Respondent.

N.D. Tejan-Cole, Esq., for the 2nd Respondent.

No Appearance by or on behalf of the 3rd Respondent.

RULING delivered on Tuesday 15th day of March, 1977.

LIVESEY LUKE J.S.C.

By Notice of Motion dated 3rd August, 1976 the Attorney-General on behalf of the State applied to the Court of Appeal for leave to appeal to this Court against the judgment of the Court of Appeal delivered on 6th July, 1976 acquitting and discharging the above-mentioned 1st Respondent on certain counts of Falsification of Accounts and of Larceny and the above-mentioned 2nd and 3rd Respondents on certain counts of Larceny. By Order dated the 20th day of August, 1976, the Court of Appeal granted leave to the State to appeal to this Court and ordered that the Notice of Appeal be filed within one month from the date thereof.

When the Appeal came up for hearing before this Court, Mr. J.H.Smythe Q.C. Learned Counsel for the 1st Respondent raised a Preliminary object (Notice of which he had previously filed and served) to the hearing of the appeal by this Court on the following ground:

"That the Appeal is not properly before the Court as the appellant has not obtained final leave to appeal."  
Mr. Smythe based his Preliminary objection on Rule 66 of the Sierra Leone Court of Appeal Rules, 1973 (No. 28 of 1973) which is in the following terms:-

"Leave to appeal to the Supreme Courts in pursuance of the provisions of any law relating to such appeal shall in the first instance be granted by the Court only upon condition of the appellant, within a period to be fixed by the Court but not exceeding three months from the hearing of the application for leave to appeal, providing good and sufficient security, to the satisfaction of the Court, in a sum not exceeding one thousand leones

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for the due prosecution of the appeal and the payment of all such costs as may become payable to the respondent in the event of the appellant not obtaining an order granting him final leave to appeal or of the appeal being dismissed for non-prosecution, or of the Supreme Court ordering the appellant to pay the respondents' costs of the appeal as the case may be."

Before proceeding further, I think that it is necessary to emphasise that this rule relates to cases where an appellant applies to the Court of Appeal for leave to appeal. It does not affect cases where the appellant appeals to the Supreme Court as of right or where he applies to the Supreme Court for special leave to appeal. Different provisions (other than Rule 66) apply to the two latter cases.

Learned Counsel for the 1st Respondent submitted with much force that under Rule 66 an appellant must first obtain from the Court of Appeal conditional leave to appeal that it was mandatory for the Court of Appeal to impose conditions for the appellant to give good and sufficient security (a) for the due prosecution of the appeal and (b) for the payment of costs, and that after complying with the conditions fixed by the Court of Appeal, the appellant should apply to the Court of Appeal and obtain therefrom final leave to appeal. Learned Counsel submitted that if the Court of Appeal failed to fix the requisite conditions of appeal, or if the appellant failed to comply with the conditions fixed or if he did not take any of the steps laid down, the Supreme Court could not properly entertain the appeal. Mr. N.D. Tejan-Cole, Learned Counsel for the Respondent argued in support.

On a literal reading of the Rule, Learned Counsels' submission is sound. I agree that in the normal case the Court of Appeal must fix the conditions of appeal in accordance with



the provisions of the rule and the appellant must comply with those conditions and then apply to the Court of Appeal for final leave to appeal.

But the important question for determination is whether Rule 66 applies to the instant appeal. In order to answer this question it is necessary to examine the conditions laid down in Rule 66.

As stated earlier the rule lays down two conditions which the Court of Appeal must fix in granting conditional leave to appeal i.e. providing good and sufficient security (i) for the due prosecution of the appeal and (ii) for the payment of costs.

With regard to the first condition, it is relevant to refer to Section 65 of the Constitution of Sierra Leone, 1971 which provides as follows:-

"65 (1) There shall be a Solicitor-General whose office shall be a public office and he shall have power in any case in which he considers it desirable so to do-

- (a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of Sierra Leone;
- (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered such criminal proceedings instituted or undertaken by himself or any other person or authority.

(2) The Solicitor-General shall in all matters including his powers under this Constitution or any other law be subject to the general or special direction of the Attorney-General.

(3) The powers conferred upon the Attorney-General by this section shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this section shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the Court.

(4) In the exercise of the powers conferred upon him by this section the Attorney-General shall be subject to the direction or control of any other person or authority.

(5) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purposes of any such proceedings, to any other court shall be deemed to be part of those proceedings.

By virtue of this Section of the Constitution, the Attorney-General, (or the Solicitor-General as the case may be) has the power to prosecute all criminal matters in Sierra Leone. This power extends to Criminal Appeals (See S.65(5) of the Constitution, 1971). In my opinion that sub-section (S.65(5) empowers the Attorney-General (or the Solicitor-General as the case may be) to prosecute all criminal appeals in Sierra Leone.

It seems to me that having regard to the very wide powers conferred on the Attorney-General (or the Solicitor-General as the case may be) by S.65 of the Constitution, the Courts cannot require him to give security for the due prosecution of any criminal proceeding, be it a Summary trial in the Magistrates Court, a trial in the High Court or an appeal in any of the



Appellate Courts. In my opinion, the reason for this is that it would be in vain for the Courts to require the Attorney-General to give security to exercise a power which he already has, and which is conferred upon him by law, in this case the basic law of the State.

The law does nothing in vain. A reference to the provision relating to committal proceedings in the Magistrates Court should illustrate this point. Section 123 of the Criminal Procedure Act, 1965 (No.32 of 1965) provides inter alia:-

"125, The Court upon committing an accused person for trial may bind by recognisance, with or without a security or sureties, as it may deem requisite, the prosecutor and every witness to appear at the trial to prosecute, or to prosecute and give evidence or to give evidence as the case may be".

It should be noted that the "Prosecutor" mentioned in the Section does not include the Attorney-General or the Solicitor-General (See S.2 of the Criminal Procedure Act, 1965). Thus whereas the Magistrates Court may require a "Prosecutor" or a witness to enter into recognisance to prosecute, the Magistrates Court has no power to impose such a requirement on the Attorney-General or the Solicitor-General.

In my judgment therefore the condition relating to giving security for the due prosecution of an appeal is not applicable in criminal proceedings where the Attorney-General represents the State and therefore the Court of Appeal cannot properly impose such a condition upon the Attorney-General.

I turn now to the Second condition stipulated in Rule 66 i.e. Security for the payment of costs. In my opinion the important question is: can the Court of Appeal compel the Attorney-General to give security for the payment of costs in

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matters where he acts on behalf of the State? I think that in order to answer the question one has to look at the position before Sierra Leone became a Republic. The question then is: could the Courts prior to 19th April, 1971 when Sierra Leone became a Republic compel the Attorney-General to give security for the payment of costs in matters where he acted on behalf of the Crown? I think that the rule was that the Attorney-General could not be required to give security for the payment of costs. This rule was based on the settled practice in the Privy Council and the English Courts which is supported by an overwhelming body of legal authority. In A.G. OF MAN V. COWLEY (1858) 19 Moo 27/14 E.R. 821, the Attorney-General of the Isle of Man objected to the Condition imposed by the Court of Exchequer in the Island, on entering into a recognizance bond for costs of appeal to the Privy Council, as being incompatible with his judicial character as Chief Law Officer of the Crown in the Island. In giving their ruling on the objections Their Lordships said- "Their Lordships are of opinion that you are entitled to appeal, without entering into the Security bond required by the Court below".

It was therefore ordered that the Attorney-General should be at liberty to enter and prosecute his appeal from the Court of Exchequer of the Island, without complying with the proviso for security for costs required. See also ROBERTSON V. DUMARESQ (N.S.W. 1864) 2 Moo (N.S.) 80/15 E.R. 827, and THE LORD ADVOCATE V. LORD DORGLAS 9 CLK and Fin. 173/8 E.R. 821 where the House of Lords held that the Lord Advocate or any other officer of the Crown, bringing an appeal was not required to enter into a recognizance to answer costs of an appeal from the Court of Session in Scotland.

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In my opinion the attainment of Republican status by Sierra Leone has not changed the position. The only relevant change effected is that instead of representing the "Crown" the Attorney-General now represents the "State". In my judgment the rule previously referred to is still in force in Sierra Leone and that rule is that the Courts cannot require the Attorney-General when representing the State in criminal proceedings to give security for the payment of costs.

In my judgment therefore the requirement for providing security for the payment of costs under Rule 66 is not applicable to the Attorney-General when he represents the State in criminal proceedings and the Court of Appeal could not properly have required the Attorney-General to give security for the payment of costs.

Having held that the two conditions stipulated in Rule 66 are not applicable to the Attorney-General where he represents the State, it follows that there were no conditions of appeal which the Court of Appeal could have imposed on the Attorney-General in granting leave to appeal. The leave to appeal granted to the Attorney-General was therefore an unconditional leave and a final order to all intents and purposes.

In my judgment, there was no need for any further application.

In view of the foregoing, I would over-rule the preliminary objection.

I agree (Sgd) E. Livesey Luke, Justice of the Supreme Court.

I agree (Sgd) C.O.E. Cole - Chief Justice Supreme Court

I agree (Sgd) C.A. Harding, Justice of the Supreme Court

I agree (Sgd) O.B.R. Tejan, Justice of the Supreme Court

I agree (Sgd) K.E.O. During, Justice of Appeal.