

MISC. APPL. 2/78

IN THE SUPREME COURT OF SIERRA LEONE

DEFEND:

GRASSAY KAMARA	-	DEFENDANT/APPLICANT
AND		
SALLY WALLACE	-	PLAINTIFF/RESPONDENT

CORAM:-

Hon. Mr. Justice C.O.E. Cole - Chief Justice
 Hon. Mr. Justice O.B.R. Tejan - Justice of the Supreme Court
 Hon. Justice Mrs. A. Awunor-Renner - Justice of the Supreme Court
 T.S. Johnson Esq. for the Applicant
 Eke A. Halloway Esq. for the Respondent

RULING DELIVERED THIS 2ND DAY OF MAY, 1978

COLE, C.J.:- In this application for special leave to appeal to this Court, Mr. T.S. Johnson for the applicant, amongst other things, sought the leave of this Court to amend his Motion Paper by substituting the expression "28th day of October, 1976" for the expression "21st day of February, 1978" contained in line 7 of the Motion Paper on the ground that the "21st day of February, 1978" was a typographical error.

Mr. Halloway on the other hand objected to the application on two grounds. The first is that the amendment applied for went to substance. The second is that the Motion itself is out of time since it was not brought within the required statutory period. Let me here and now dispose of the second ground.

Rule 10 of the Supreme Court Rules 1976 (P.N. No.9 of 1976) states as follows:-

"An application for special leave shall be filed within one month of the date of the judgment from which leave to appeal is sought or of the date on which leave to appeal to Court is refused by the Court of.."

Court of Appeal.

According to Section 4(1) of the Interpretation Act 1971 (Act No. 8 of 1971) "month" means a Calendar month.

Rule 1 of the Supreme Court Rules 1976 also gives the same definition to the word "month".

According to the Affidavit filed in support of the Motion, which has not been challenged, the Court of Appeal in its Ruling given on the 21st day of February 1978, refused leave to appeal to the Supreme Court against the judgment of that Court dated the 28th day of October 1976. The question now arises - did the applicant make his application for special leave to appeal to this Court within a month after the refusal of leave by the Court of Appeal? Here it should be noted that the Motion Paper is dated, and was filed on, the 21st March 1978. This question turns on what Calendar month means.

The authorities seem to establish that in considering what is the length of a Calendar month it is sufficient when the months are broken, whatever be the length of either to go from one day in one month to the corresponding day in the other month - See "FREEMAN VS. READ - 1863, 32 L.J.M. 226; RADCLIFFE V. BARTHALOMEW 1891-1894 A.E.R. Reprint page 829; "GOLDSMITH CO. VS. WEST METROPOLITAN RAILWAY, 1904 1 K.B., 1 at page 5; in the latter case where all the authorities were exhaustively reviewed by the English Court of Appeal.

I share the view that where a period of time from or after a given date or event is prescribed as the period within which an act is to be done, the day of that date or event is to be excluded in the computation of the period and the act is to be done on or before the last day of the period. This seems to be the view shared by our Legislature when it stated in Section 39 (1)(a) of the Interpretation Act 1971 (Act No. 8 of 1971) as follows:

"(1) In computing time for the purposes of any Act -

(a) a period reckoned by days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done:"

I agree that the expression used in that subsection reads "a period reckoned by days"; but I would construe that expression to mean "within a specified period". Taking all the circumstances into consideration I am of the opinion that this Motion was filed within a month of the date on which the Court of Appeal refused leave to appeal, that is, 21st February, 1978, which is an excluded day. I would therefore overrule Mr. Halloway's objection on this point.

With regard to the other point of objection, I think this Court can properly deal with it within the ambit of Rule 5(2) of the Supreme Court Rules 1976 which states as follows:-

d (2) Where no provision is expressly made by these Rules regarding the practice and procedure which shall apply to any appeal or application before the Supreme Court, the Supreme Court shall prescribe by means of practice directions such practice and procedure as in the opinion of the Supreme Court the justice of the appeal or application may require.

In the opinion of this Court I would like it to be stated as a practice direction that this Court has power within the ambit of Rule 5(2) of the Supreme Court Rules 1976 to consider applications for amendment and grant same if the justice of the case so requires. Taking all the circumstances of this case into consideration I

would grant the amendment sought since the evidence in support of the Motion shows clearly that the expression "21st day of February 1978" instead of "28th day of October, 1976" was inserted in the Motion Paper in error. This amendment, however, is being granted on terms as to costs.

C.O.E. Cole

C.O.E. Cole
C.J.

I agree

O.B.R. Tejan
.....

O.B.R. Tejan - Justice of the Supreme Court

I agree

A.V. Awunor-Renner
.....

A. V. Awunor-Renner - Justice of the Supreme Court