

IN THE SUPREME COURT OF SIERRA LEONE

CORAM:-

The Honourable Ag. Chief Justice E. Livesey Luke - Presiding
 The Honourable Mr. Justice C.A. Harding - Justice of the Supreme Ct.
 The Honourable Mrs. A.V. Awunor-Renner - Justice of the Supreme Ct.

SUP. CT. MISC. APP. 1/79

THE STATE - APPLICANT

Vs.

BRIMA DABOH - RESPONDENT

R U L I N G

Livesey Luke Ag. C.J.:—This is an application by the Director of Public Prosecutions on behalf of the State for extension of time within which to appeal to the Supreme Court against the decision of the Court of Appeal given on 19th December, 1978.

Pursuant to Order 76 of the Supreme Court Rules, 1976, the applicant has sent to the Registrar of the Supreme Court the following forms:-

- (a) Notice of Application for Extension of Time within which to appeal, in the form set out in Form 2 of the Second Schedule to the Supreme Court Rules, 1976, and
- (b) a duly filled Notice of Criminal Appeal, in the form set out in Form I of the Second

(d) final decisions in any civil or criminal proceedings on questions as to the interpretation of the Constitution; and

(e)

(2) Subject to the provisions of the Constitution and this Act an appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council ~~now the~~ Supreme Court with leave of the Court of Appeal in the following cases -

(a) decisions in any civil or criminal proceedings where in the opinion of the Court of Appeal the question involved in the appeal is one that by reason of the general or public importance or otherwise, ought to be submitted to Her Majesty in Council ~~now the~~ Supreme Court."

When the Application for leave came before the Court of Appeal for hearing, that Court indicated that it wished to be addressed on the interpretation of the words "general and public importance." So quite clearly the Court of Appeal was adverting its mind to Section 70(2)(a) of the Courts Act, 1965. It turned out that the Court of Appeal was never addressed as requested, because on 8th February, 1979 the Court of Appeal granted the Director of Public Prosecutions leave to withdraw his application for leave to appeal. In the meantime, on 7th February, 1979,

the Director of Public Prosecutions had sent to the Registrar of the Supreme Court Notice of Application for extension of time within which to appeal to the Supreme Court. That is the application now before us. The main reason given by the Director of Public Prosecutions for the application is that when he filed the Motion for the leave of the Court of Appeal to appeal to the Supreme Court he did not advert his mind to Section 103(1)(b) of the Constitution of Sierra Leone, 1978. That sub-section provides as follows:-

"103(1) An appeal shall lie from a judgment, decree or order of the Court of Appeal to the Supreme Court -

(a)

(b) as of right, in any criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment, decree or order of the High Court of Justice in the exercise of its original jurisdiction."

Mr. Tejan-Cole submitted that this sub-section confers an automatic right of appeal in all criminal matters brought to the Court of Appeal from a judgment decree or order of the High Court in the exercise of its original jurisdiction. He submitted further that that sub-section rendered the leave of Court of Appeal to appeal to the

Supreme Court unnecessary. He conceded in effect that his application to the Court of Appeal for leave to appeal was unnecessary and that he should have appealed directly to the Supreme Court without applying for leave of any sort.

Mr. Metzger conceded that the procedure laid down in the Rules of the Supreme Court 1976 for applying for extension of time within which to appeal from the Court of Appeal to the Supreme Court had been complied with and that Section 103(1)(b) of the 1978 Constitution makes provision for an appeal to lie as of right from the Court of Appeal to the Supreme Court in criminal matters tried by the High Court in exercise of its original jurisdiction. Learned Counsel however submitted that the grounds stated for the application for extension of time did not constitute "substantial grounds" to warrant the granting of the application.

There is no doubt that Section 103(1)(b) of the Constitution of Sierra Leone, 1978 introduced far-reaching and indeed radical changes in the law relating to appeals from the Court of Appeal to the Supreme Court in criminal matters. Prior to the coming into operation of the 1978 Constitution, on the 14th June 1978, there was no right of appeal as of right from the Court of Appeal to the Supreme Court in criminal matters tried in the High Court in its original jurisdiction except where the decision complained of involved questions as to the interpretation of the Constitution (See Section 70(1)(d) of the Courts Act 1965). The position was that in all criminal proceedings except those coming within the

exception, an appeal lay from the Court of Appeal to the Supreme Court with the leave of the Court of Appeal (see Section 70(2) of the Courts Act, 1965) or with the Special leave of the Supreme Court (see Section 73 of the Courts Act, 1965). Without doubt, on the coming into operation of the 1978 Constitution, by virtue of Section 103(1)(b) thereof, there is an automatic right of appeal from the Court of Appeal to the Supreme Court in all criminal matters tried in the High Court in its original jurisdiction and no leave of the Court of Appeal or Special leave of the Supreme Court is necessary in such matters. In all Criminal cases decided in the High Court in the exercise of its original jurisdiction appeal lies as of right irrespective of whether the case involves the interpretation of the Constitution or whether any question of general or public importance is involved. An appeal based solely on questions of fact is now permissible as of right.

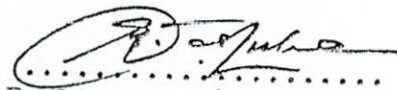
In our judgment the rule conferring jurisdiction on this Court to grant extension of time within which to appeal to the Supreme Court (Rule 73(2)) gives this Court unfettered discretion in deciding whether or not to grant such an application. That discretion must of course be exercised judicially. In our opinion this Court must consider each application on its merits.

In exercising its discretion, the Court must have regard to all the circumstances of the application, including for example the reason for the delay, the bona fides of the application, the promptitude with which the application was made after the expiration of the time limited for appealing.

The facts of the instant application reveal that the respondent was tried and convicted in the High Court for Murder. In our view, having regard to the provisions of the Second Schedule of the Courts Act, 1965 there could be no doubt that that was a matter tried by the High Court in its original jurisdiction. In the circumstances the State should have appealed directly to the Supreme Court as of right and should not have applied to the Court of Appeal for leave to appeal to the Supreme Court. We are satisfied that the application to the Court of Appeal for leave to appeal to the Supreme Court was as a result of inadvertence on the part of the Director of Public Prosecutions.

It is also relevant to state that the application for leave made to the Court of Appeal was filed within the time limited by the Supreme Court Rules, 1976. We are also satisfied that immediately the Director of Public Prosecutions realized that the leave of the Court of Appeal was not necessary, he promptly withdrew the application for leave and made this instant application.

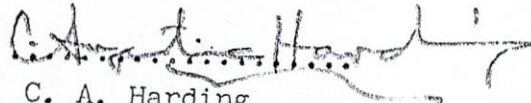
In all the circumstances, we have come to the conclusion that this is a fit and proper case for granting extension of time within which to appeal to the Supreme Court. We accordingly grant the State extension of time within which to appeal to the Supreme Court against the decision of the Court of Appeal given on 19th December, 1978. We order that the Notice of Appeal be given within 21 days hereof.



E. Livesey

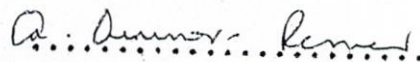
Acting Chief Justice.

27th February, 1979.



C. A. Harding

Justice of the Supreme Court.



Agnes Awunor-Renner

Justice of the Supreme Court.