

SC. CR. APP 3/79

IN THE SUPREME COURT OF SIERRA LEONE

CORAM:-

The Hon Mr. Justice E. A. Livesey Luke - Chief Justice

The Hon Mr. Justice C. A. Harding - Justice of The Supreme Court

The Hon Mr Justice O. B. R. Harding - Justice of The Supreme Court

The Hon Mrs Justice A Awunor-Renner - Justice of The Supreme Court

The Hon Mr Justice S. Beccles Davies - Justice of The Supreme Court

BETWEEN:

THE STATE - APPLICANT

AND

I.M. ISCANDRI - RESPONDENT

Dr. W. S. Marcus Jones for The State

Mrs. H. Ahmed for the Respondent

RULING DELIVERD THIS 18TH DAY OF FEBRUARY, 1980

AWUNOR-RENNER J.S.C.:- This is an application for leave to amend the official record of the above appeal by the addition to it of the transcript of a tape recording made of the arguments before the Sierra Leone Court of Appeal on Thursday 1st march, 1979.

The application is supported by an affidavit sworn to by Dr. Marcus Jones, Counsel for the applicant on the 8th January, 1980.

The circumstances leading to this application are as follows. The hearing of the appeal in this matter was fixed for the 25th day of January, 1979. The appeal was dismissed without any hearing on that date because on the same date counsel for the applicant took out a motion for the appeal to be relisted. The application was granted and the appeal was fixed for hearing on the 20th February, 1979. On the 17th day of February' 1979 Counsel for the applicant failed to appear in Court.

After this, the Court ordered his personal appearance on the 23rd February, 1979. Counsel eventually appeared in court on the 1st March, 1979. He then stated before us that on account of the nature of the court's order he took a tape recorder machine to court that day and made a

recording of what transpired in Court. He was now making this application he said because of the scanty nature of the record of the proceedings of 1st March, 1979. That he verily believed that they did not adequately reflect the nature of what happened in Court.

He also stated that he had the tape in his possession and that he had personally checked the transcript with the tape recording and that he believed it to be a true and correct transcript of the proceedings of the 1st March, 1979.

In his argument before the Court, Counsel for the applicant after referring the Court to the various exhibits annexed to his affidavit said that he was making this application because of the scanty notes on page 15 of the record of the Court of Appeal and because of the nature and particularly ground: (b) of his appeal which states as follows :-

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That the Court of Appeal failed to allow the appellant herein to put forward its arguments clearly and interrupted the arguments so excessively that it became impossible for the said arguments to be fairly put”.

Counsel submitted that it was for this Court to control its proceedings and admit the transcript of tape recording.

Mrs Hannah Ahmed for the respondent said that she was not objecting in principle to the application but submitted that the proper foundation had not been laid. Certain requirements she said must be fulfilled.

- (i) That the applicant must first prove the authenticity of the tape recording transcribed into a transcript.
- (ii) Such transcript must be proved from the original tape. She referred the Court to two cases in support to her submission. R. v. Ali reported in (1956) 2 A.E.R. at page 464 and also the case of R. v. Robson (1972) 1 W.L.R at page 651.

Let me at this stage say that during the hearing of this application the Court adjourned for sometime to give Counsel for the respondent an opportunity of listening to the original tape recording.

When the Court reconvened after the adjournment she said that although she had listened to the tape recording she could not even recognize her own voice although some of the contents of the recording sounded familiar. I must add also that she did not file any affidavit in opposition to the affidavit filed in support of this application.

In the case of R. v. Robson referred to supra evidence of tape recording was admitted in evidence. It was held that in admitting the evidence of a tape recording the method of making the recording cannot effect its acceptance by this Court as Counsel for the applicant has told this Court why he did it. This Court saw and read the transcript of the tape recording and Counsel for the respondent also listened to the tape recording. One cannot say that any grave injustice would be done in accepting the transcript as the material contained in it is relevant and is the only record of what transpired in Court on that day as the Judge's notes were most inadequate.

The justice of the case demands that if ground (b) should be properly argued then transcript of the recording must be accepted to form part of the record. It must however be exphasized that each case must be decided on its meits.

In the present case there is no doubt that the record of the proceedings taken on the 1st day of March, 1979 was most inadequate. I have also considered the cases which have been referred to and listened to the arguments of both Counsel for the applicant and respondent and also had the opportunity of reading the transcript of the recording and feel that this is fit and proper case for

this Court to exercise its discretion and allow the application now made before him.

Having said that the application for leave to amend the official record by the addition to it of the transcript of tape recording made of the proceedings before the Court of Appeal in this case ought to be allowed. I would like to add that this should not be regarded as a general practice as otherwise it would definitely lead to a situation where the Supreme Court and the Court of Appeal in every case would be called upon not only to admit transcripts to tape recordings but also to allow amendments of their records in this way. It is only in exceptional cases and for cogent reasons that this court would entertain such applications. It is for the above reasons that I concurred in granting the application on the 15th January, 1980.

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Hon. Justice A. Awunor-Renner, J. S. C. (Sgd)

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Hon. Justice E. Livesey Luke, Chief Justice (Sgd)

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Hon. Justice C. A. Harding, J. S. C. (Sgd)

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Hon. Justice O. B. R. Tejan, J. S. C. (Sgd)

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Hon. Justice S. Beccles Davies, J. S. C. (Sgd)