

## CAMPBELL & ORS v THE STATE

SC

**SUPREME COURT OF SIERRA LEONE**, Supreme Court Criminal Appeal 4 of 1982, Hon Mr Justice E Livesey Luke CJ, Hon Mr Justice CA Harding JSC, Hon Mrs Justice AVA Awunor-Renner JSC, Hon Mr Justice S Beccles Davies JSC, Hon Mr Justice MS Turay JA, 4 July 1983

**[1] Criminal Law and Procedure – Notice of appeal – Whether appeal filed within one-month time limit – Meaning of “calendar month” – Calendar month starts to run from the date of the decision not first day of the following month – Plain and unambiguous interpretation – Supreme Court Rules 1982 s 74(1)**

**[2] Words and Phrases – “Calendar month”**

The second appellant was convicted of robbery contrary to s 23(2) of the Larceny Act 1916 in High Court sitting in Freetown on 8 May 1981. On 9 June 1982 the Court of Appeal allowed his appeal against the conviction and substituted a guilty verdict for receiving but dismissed the appeal against the sentence. The second appellant filed a notice of appeal to the Supreme Court dated 31 July 1982. Rule 74(1) of the Supreme Court Rules 1982 prescribed that “Where the State or any person desires to appeal to the Supreme Court ... he shall give notice of an application for special leave to appeal within one month of the decision of the Court of Appeal”. The question was whether the appeal was within the prescribed time of one month. The appellant argued time for giving a notice of appeal would not start to run until the first day of the following month after decision of the Court of Appeal. The State argued that a “calendar month” was the period expiring on the date of the succeeding month immediately preceding the date on which the decision was given.

**Held, per totam curiam, dismissing the appeal, per Livesey Luke CJ:**

1. The words of r 74(1) stating that the notice shall be given “within one month of the decision of the Court of Appeal” are plain and unambiguous. “One month” means one calendar month from the date of the decision. There is nothing in the sub-rule to indicate or even suggest that “within one month of the decision” means within one calendar month from the first day of the succeeding month. The construction contended for by the appellant would result in inequality of treatment of appellants, would make the period for giving notices of appeal indefinite and would result in absurdity.
2. It was well settled that when the period prescribed for doing an act or taking a procedural step is a calendar month running from any arbitrary date, the period expires on the day in the succeeding month immediately preceding the day corresponding to the date upon which the period starts. As a general rule, the computation of time is the same whether the matter is civil or criminal. Therefore “within one month of the decision of the Court of Appeal” in this case means one calendar month from 9 June 1982. On this basis, one month expired on 8 July 1982 and the notice of appeal was patently given out of time. *Migotti v Colvill* (1879) 4 CPD 233 and *Radcliffe v Bartholomew* [1892] 1 QB 161 applied.

### **Cases referred to**

*Migotti v Colvill* (1879) 4 CPD 233

*Radcliffe v Bartholomew* [1892] 1 QB 161

### **Legislation referred to**

*Larceny Act 1916 s 23(2)*

*Supreme Court Rules 1982 rr 1, 74(1)*

### **Other Sources Referred to**

*Halsbury's Laws of England* [3rd Ed] Vol 37 para [143] pp 83-84

## Appeal

This was an appeal filed by the second appellant on 31 July 1982 from the decision of the Court of Appeal on 9 June 1982 substituted the High Court's guilty verdict for robbery to a guilty verdict for receiving but dismissing the appeal against the sentence. The facts appear sufficiently in the judgment of Livesey Luke CJ.

*CVM Campbell for the appellant.*

*AKA Barber for the respondent.*

**LIVESY LUKE CJ:** The second appellant was convicted before the High Court sitting in Freetown on 8 May 1981 of the offence of robbery contrary to s 23(2) of the Larceny Act 1916 and sentenced to 7 years imprisonment. He appealed to the Court of Appeal against his conviction and sentence. On 9 June 1982 the Court of Appeal delivered judgment, inter alia, substituting a verdict of guilty of receiving against the second appellant in place of the verdict of guilty of robbery and dismissed the appeal against sentence. Subsequently, Mr CVM Campbell, solicitor acting for the second appellant, gave a notice of appeal to the Supreme Court dated 31 July 1982 against the judgment of the Court of Appeal.

When the appeal came up for hearing on 7 June 1983, this Court called upon Mr Campbell, counsel for the second appellant, to satisfy us that the appeal of the second appellant was given within the prescribed time. The Supreme Court Rules 1982 prescribe the time for giving notice of criminal appeal to the Supreme Court. Rule 74(1) provides as follows:

“74(1) Where the State or any person desires to appeal to the Supreme Court in a criminal cause or matter he shall give notice of a criminal appeal or notice of an application for special leave to appeal within one month of the decision of the Court of Appeal or within ten days of the refusal of leave by the Court of Appeal, as the case may be.”

Mr Campbell accepted in the course of his argument that “month” in rule 74(1) means “calendar month”. Indeed rule 1 of the Rules defines month as “calendar month”. But Mr Campbell submitted that one month in the context of rule 74(1) means one of the twelve unequal parts (months) into which a calendar year is divided, for example the months of January, February, April and so on. In other words, according to Mr Campbell, a month means from the first to the last day of the month. So according to him, if a decision is given on the 2nd of a month, time for appealing would not start to run until the first day of the following month. Mr Barber on the other hand submitted that for the purpose of computing a “calendar month” the period expires on the date of the succeeding month immediately preceding the date on which the decision was given.

What Mr Campbell's arguments amounts to is this: whether a decision was given on the first or the last day of a particular month, time for giving a notice of appeal would not start to run until the first day of the following month. So an aggrieved party would have more or less time to give his notice of appeal depending on whether the decision was given early or late in the month. Such a result would give an aggrieved party whose decision was given early in the month an unwarranted advantage. In my opinion, the construction contended for by Mr Campbell would result in inequality of treatment of appellants, would make the period for giving notices of appeal indefinite and would result in absurdity.

I think that the words of the sub-rule are quite plain and unambiguous. The rule says that the notice shall be given “within one month of the decision of the Court of Appeal”. I interpret one month “of the decision” as meaning one month from the date of the decision. In other words, it means one calendar month from the date of the decision. There is nothing in the sub-rule to indicate or even suggest that “within one month of the decision” means within one calendar month from the first day of the succeeding month.

I think that it is well settled that when the period prescribed for doing an act or taking a procedural step is a calendar month running from any arbitrary date, the period expires with the day in the succeeding month immediately preceding the day corresponding to the date upon which the period starts. An arbitrary date in this context would mean the date on which a decision is given by a court. So if a decision is given on the 2nd of the month, the one month within which to give notice of appeal would expire on the 1st of the succeeding month. Similarly, if a decision is given on the 15th of the month, the one month within which to give notice of appeal would expire on the 14th of the succeeding month, and so on and so forth. But the position is different if the period starts at the end of a calendar month which contains more days than the succeeding month. In that case the period would expire at the end of the succeeding month. So if, for example, the decision is given on 31 March, the period of one month would expire on the 30 April. Similarly, if the decision is given on 31 January, the period of one month would expire on 28th February, or in the case of a leap year on 29 February. See *Halsbury's Laws of England* [3rd Ed] Vol 37 para [143] pp 83-84.

As a general rule, the computation of time is the same whether the matter is civil or criminal. See *Radcliffe v Bartholomew* [1892] 1 QB 161. So if a prisoner is sentenced to one month's imprisonment on the 17th of the month, his term would expire on the 16th of the succeeding month. Thus it was held in *Migotti v Colvill* (1879) 4 CPD 233 that a person sentenced to imprisonment for the space of one calendar month is entitled to be discharged on the day in the succeeding month immediately preceding the day corresponding to that from which his sentence takes effect. Brett LJ stated the position succinctly at p 238 thus:

"I am of the opinion that the term a calendar month is a legal and technical term, and that we are bound to interpret its legal and technical meaning. The meaning of the phrase is that, in computing time by calendar months, the time must be reckoned by looking at the calendar and not by counting days; and that one calendar month's imprisonment is to be calculated from the day of imprisonment to the day numerically corresponding to that day in the following month less one."

And Cotton LJ added, *inter alia*, at pp 238-239:

"... it is not a question of measurement of time, but of the technical meaning of the word 'calendar month'. Prisoners cannot always be imprisoned during one particular calendar month, in the sense of a month the name of which is to be found in the calendar. What then is the meaning of the term when the sentence begins otherwise than on the first day of a calendar month? The imprisonment ends at 12 o'clock on the day immediately preceding the day in the following month corresponding to the day on which the imprisonment began."

In the course of his reply Mr. Campbell reminded us, rightly, that this Court is not bound by decisions of the English courts and urged us not to follow English decisions like *Migotti v Colvill*, *supra*. In my opinion the interpretation put by the English Courts over the years on the words "calendar month" in cases like *Migotti v Colvill* and *Radcliffe v Bartholomew* is the only reasonable and common sense interpretation, and one not calculated to result in absurdity or uncertainty. I have no hesitation in adopting and applying those decisions.

In my judgment therefore "within one month of the decision of the Court of Appeal" in the instant case means one calendar month from 9 June 1982. On the basis of the computation stated above, the one month expired on 8 July 1982. In the circumstances the notice of appeal was patently given out of time. I would therefore strike out the appeal of the second appellant.

**Hon Mr Justice CA Harding JSC:** I agree. **Hon Mrs Justice AVA Awunor-Renner JSC:** I agree. **Hon Mr Justice S Beccles Davies JSC:** I agree. **Hon Mr MS Turay JA:** I agree.

Reported by Victoria Strasser-King & Patrick Fofanah