

IN THE SUPREME COURT OF SIERRA LEONE

CORAM:

The Honourable Mr. Justice E. Livesey Luke, C.J. - Presiding  
The Honourable Mr. Justice C.A. Harding - J.S.C.  
The Honourable Mrs. Justice A.V.A. Awunor-Renner - J.S.C.  
The Honourable Mr. Justice S. Becoles Davies - J.S.C.  
The Honourable Mr. Justice M.S. Turay - J.A.

SC, Cr. App. No. 4/82

Alphonso Campbell  
Ballah Bangura  
Alimamy Kamara (Alias Thaimu) } - Appellants

And

The State - Respondent

C.V.M. Campbell, Esq., - for the Appellants

A.K.A. Barber, Esq., - for the State

RULING DELIVERED ON MONDAY 4TH JULY, 1983.

Livesey Luke, C.J.

The 2nd Appellant was convicted before the High Court sitting in Freetown on 8th May, 1981 of the offence of Robbery contrary to section 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 9th June, 1982 the Court of Appeal delivered judgment inter alia substituting a verdict of Guilty of Receiving against the 2nd Appellant in place of the verdict of Guilty of Robbery and

dismissed the appeal against sentence. Subsequently, Mr. C.V.M. Campbell, Solicitor acting for the 2nd Appellant gave a Notice of Appeal to the Supreme Court dated 31st July, 1982 against the judgment of the Court of Appeal.

When the appeal came up for hearing on 7th June, 1983, this Court called upon Mr. C.V.M. Campbell, Counsel for the 2nd Appellant, to satisfy us that the appeal of the 2nd 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."  
(Emphasis mine).

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 argument 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



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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 the 31st of March, the period of one month



would expire on the 30th of April. Similarly, if the decision is given on the 31st of January, the period of one month would expire on 28th February, or in the case of a leap year on 29th February. See Hals. Laws 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 Q.B. 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 C.P.D. 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 L.J. 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 L.J. 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 interpreta-  
tion, 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 9th June 1982. On the basis of the computation stated  
above, the one month expired on 8th July, 1982. In the circum-  
stances the Notice of Appeal was patently given out of time.

I would therefore strike out the appeal of the 2nd Appellant.

(Sgd.) Hon. Mr. Justice E. Livesey Luke, C.J.

I agree .....

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

I agree .....

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

I agree .....

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

I agree .....

(Sgd.) Hon. Mr. M.S. Turay, J.A.