

IN THE SUPREME COURT OF SIERRA LEONE

CORAM:

Hon. Mr. Justice. C. A. Harding -J.S.C. Presiding

Hon. Mr. Justice O.B.R. Tejan -J.S.C.

Hon. Mr. Justice S. Beccles Davies -J.S.C.

SC. MISC. APP. NO. 7/83

BETWEEN:

SOLOMON H. DEMBY -APPLICANT

Vs

MANNAH KPAKA -RESPONDENT

Tejan M. Savage, for the Applicant

A.B. Yilla, Esq. for the Respondent

RULING DELIVERED ON THIS 18TH DAY OF APRIL, 1984.

BECCLES DAVIES, J.S.C. :-

Introduction

This is an application for (1) “an enlargement of time to appeal (SIC) to this Honourable court for special leave to appeal against the judgment and order of the Court of Appeal dated the 13th day of July, 1983. (2) special leave to appeal against the said order and (3) an interim stay of execution of the said judgment; (4) any further or other relief equitable in the opinion of this honourable Court.

Facts

On 13th September, 1983 the Court of Appeal dismissed the applicant’s interlocutory appeal. The applicant thereafter applied for leave to appeal to this Court. That application was refused by the Court of Appeal. An application dated the 13th July, 1983 for special leave to appeal was heard by this Court and struck out on 2nd November, 1983. The present application was filed on 12th November, 1983. The present application filed 12th November, 1983 seeking the orders I have quoted above.

The right to appeal to the Supreme Court

— The right of appeal to the Supreme Court on any judgment, order or decree of the Court of Appeal is to be found in section 103 of the Constitution of Sierra Leone 1978. (Hereinafter referred to as “the Constitution”) Section 103 provides –

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

- (a) as of right, in any civil cause or matter where the amount or value of the subject matter of the dispute is not less than such an amount as may be determined by parliament; or
- (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; or
- (c) with leave of the Court of Appeal, in any cause or matter, civil or criminal, where the court is satisfied that the case involves a substantial question of law or is of public importance.

(2) Notwithstanding the provisions of the preceding sub-subjection, the Supreme Court shall have power to entertain any application for special leave in any cause or matter, civil or criminal, to the Supreme Court, and to grant such leave accordingly.”

I find the provisions of Section 103 (1) and (2) repeated in Rule 6(1) of the Supreme Court rules 1982 (P.N.1 of 1982) to which I shall hereafter refer as “the rules”.

Rule (6) (1) (a) of the Rules deals with ‘appeals as of right’ in civil cases; Rule (60) (1) (b) refers to appeals as of right in civil matters; and Rule 6(1) (c) provides for appeals with leave of the Court of Appeal in civil or criminal matters. Rule 6(2) enables an intending appellant to apply to this court for ‘special leave’ to appeal.

Rule 7 of The Rules

In order to give due regard to the hierarchy of Courts set up by sections 101, 107 and 110 Of The Constitution, Rule 7 of ‘the Rules’ provides that an application for leave to appeal must be made in the first instance to the Court of Appeal and if that court refuses to grant the leave sought, then application could be made to this court for ‘special leave’ to appeal.

Time for applying for ‘special leave’

The period stipulated within which an application for special leave is to be made is set out in Rule 10 of the Rules. It states:

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

The rather complicated phraseology of this Rule seems to have been simplified by Rule 26 sub-rule 3 which simply requires the application to be filed within one month from the date of the decision of the Court of Appeal.

‘Rule 26’

Rule 26 of the Rules deals with time for appealing and time within which application for extension of time is to be made.

I will set out Rule 26. It stipulates –

“26(1) where an appeal lies as of right the appellant shall lodge his notice of appeal within three months from the date of the judgment appealed against unless the Supreme Court shall enlarge the time’.

(2) Where there is no appeal as of right the appellant shall lodge his notice of appeal within three months from the date on which to appeal or special leave is granted.

(3) An application for special leave shall be filed within one month from the date of the decision of the Court of Appeal.

(4) No application for enlargement of time in which to appeal shall be made after the expiration of one month of the time prescribed within which an appeal may be brought” (Emphasis mine).

Generally speaking, Rule 26 deals with times within which civil appeals as of right, appeals as of leave, and appeals with special leave are to be lodged. Finally it deals with applications for enlargement of time within which to appeal.

Sub-rule (1) requires that an application as of right shall be lodged within three months of the judgment appealed from, unless the time lodging such an appeal been extended under sub-rule (4). It provides for time in respect of those matters referred to in Sec. 103(1) (a) of The Constitution, and Rule 6(1) (a) of The Rules.

Sub-rule (2) stipulates that appeal with leave as well as those with special leave shall be filed within three months from the date on which leave or special leave was granted. Consideration is thereby given to matters in Sec. 103(1) (c) and 103(2) of The Constitution, and Rules 6(1) (c) and 6(2) of The Rules.

By sub-rule (3) an application for special leave to appeal should be made within one month from the decision of the Court of Appeal. The sub-rule simplifies the provision of Rule 10. Applications for special leave under Sec. 103(2) of The Constitution and 6(2) of The Rules have a time limits prescribed by them.

Sub-rule (4) allows an intending appellant one month within which to apply for enlargement of time in which to appeal after the time within which an appeal may be brought. I have highlighted the phrases “enlargement of time within which to appeal” and “after the time within which an appeal may be brought” to indicate that there is no motion in this sub-rule or for that matter anywhere in Rule 26 in which provision is made for enlargement of time within which ‘special leave’ may be made and granted. The sub-rule speaks of enlargement of time within which an appeal may be brought. Counsel for the applicant during his argument relied on this sub-rule. The sub-rule is not useful to his present application.

Sub-rule (4) as I apprehend it, refers to appeals as of right where the period is for three months, and appeals in which leave or special leave has been granted and this Court is satisfied that there were ‘good and substantial reasons for the intended applicant’s failure to lodge his appeal within the prescribed period of three months. It does not avail someone who has had his application for special leave to struck out. Such an application for special leave cannot be renewed after the expiration of one month of the refusal of the Court of Appeal to grant leave to appeal to this court.

‘Rule 74’

By way of contrast I will draw attention to the provisions of Rule 74(1) and (2) of the Rules. Let me at once state that they relate to criminal appeals. They are however germane to the issue I am demonstrating. Rule 74 sub-rule (1) provides –

“Where the state or any person desires to appeal to the Supreme Court criminal cause or matter shall give 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 refusal of leave by the Court of Appeal as the case may be

(2) The period within which notice of an application for special leave may be given may be extended by the Supreme Court on an application by notice of motion.”

This sub-rule provides for the enlargement of time within which an application for special leave may be made in criminal matters.

Can this court extend time for special leave?

I have contrasted the position in civil matters with that regarding criminal matters. There is no power under the present Rules of this Court to grant such an extension of time within which to apply for special leave to appeal in civil matters. The answer to the question I have pose above is No.

GATTI V SHOOSMITH

The decision in GATTI V SHOOSMITH (1939) 3 All E.R. 916 was cited to us by counsel for the applicant while urging us to grant him an extension of time within which to apply for special leave.

That was a case in which the English Court of Appeal granted an extension of time within which to appeal. The omission to appeal in due time in that case was due to a mistake on the part of the applicant’s legal adviser. It is alleged in the instant case that as a result of “the error or mistake of counsel” in making his application to this Court on 2nd November, 1983 the application was struck out; and that “in the interest of justice and all the circumstances of this case the applicant ought to suffer because of the error or mistake or negligence of his counsel or his solicitor”.

I will now consider the appropriateness of Gatti’s case to the instant application. It is based on the combined effect of two rules of the English Annual Practice – order 58 Rule 13 sub-rule 2 provides –

“Any application to the Court of Appeal for leave to appeal (other than an application made after the expiration of the for appealing) shall be made ex parte in first instance

Order 64 Rule 7 then provides -

“ A Court or a Judge shall have power to enlarge the time appointed by these Rules or fixed by an Order enlarging time, for doing any act or taking any proceeding upon such terms (if any) as the justice of the case may require and any such enlargement may be ordered although the application of time appointed or allowed

The effect of these two rules is to give the court an unfettered discretion to extend the time stipulated by the Rules contained in Annual Practice. To be able to exercise a discretion, the court must be empowered by some rule of law or practice which then becomes the basis on which the discretion could be exercised one way or the other. There is no similar provision in the Rules of this Court giving it a blank cheque as its were to exercise its discretion to extend the time within which special leave could be applied for.

Conclusion

No power having been conferred on this Court to extend time within which an application for special leave could be made in civil cases this court cannot grant the application. It is accordingly dismissed.

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

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

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